THE

Justice of the Peace.

AND

PARISH OFFICER.

By RICHARD BURN, LL.D.

LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

THE TWENTY-FOURTH EDITION:
With CORRECTIONS, ADDITIONS, and IMPROVEMENTS.
The CASES brought down to the End of Trinity Term,
5 GEO. IV. 1824.
And the STATUTES to the End of 5 GEO. IV. 1824.

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BARRISTER AT LAW,
AND CHAIRMAN OF THE GENERAL QUARTER SESSIONS OF THE PEACE
FOR THE COUNTY OF STAFFORD.

Dr. Burn has great merit. He has done great service, and deserves great commendation.—Per Lord MANSFIELD C.J. Burr. S. C. 548.

IN FIVE VOLUMES.

VOL. II.

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1825.

A

TABLE

OF THE

NAMES OF CASES

IN THIS VOLUME.

A

TABLE

OF

THE STATUTES

IN THIS VOLUME.

TABLE OF THE NAMES OF TITLES,

CONTAINED IN THE SECOND VOLUME.

Excise



Excise and Customs.

AS the customs and excise, so far as justices of the peace, constables, and other peace officers are concerned therein, are in some measure connected and interwoven with each other, it is thought proper here to represent them together, that the reader may at once have a full and distinct comprehension of the whole.

Sect. I. *Of the Customs in general.*
II. *Of the Excise in general.*
III. *Of warehousing Goods.*
IV. *Of the several Particulars under the Management of the Commissioners of the Customs and Excise.*

I. Of the Customs in general. (*a*)

(*a*) *Duties, &c.*
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(*b*) *Appointing and swearing Commissioners and Officers.*
[6 & 7 W. & M. c.1. 5 G.4. c.79.]

(*c*) *Seizures—of what Things and by whom.*
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(*d*) *Rewards to Persons seizing.*
[47 G.3. sess. 2. c.66.—56 G.3. c.104.—57 G.3. c.87.—58 G.3. c.76.—59 G.3. c.6.—c.121.—1 G.4. c.43.—3 G.4. c.110.]

(*e*) *Shipping or landing Goods without Warrant.*
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(*f*) *Writ of Assistance and Warrant.*
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(*g*) *Prohibited Goods may be seized.*
[6 G.1. c.21.—9 G.2. c.35.—5 G.3. c.43.—19 G.3. c.69. 24 G.3. Sess.2. c.47.]

(*a*) By stat. 4 G.4. c.23. the several boards of Customs and also of Excise in *G. B.* and *Ireland* are consolidated.

(h) *Ships hovering on the Coasts having Spirits, Tea, Tobacco, or Snuff on board.*
[5 G. 3. c. 43. — 24 G. 3. sess. 2. c. 47. — 45 G. 3. c. 121. — 47 G. 3. sess. 2. c. 66. — 56 G. 3. c. 104. — 57 G. 3. c. 33. — 58 G. 3. c. 76. — 59 G. 3. c. 121. — 3 G. 4. c. 110.]

(i) *Certain Ships not to be used unless licensed.*
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(k) *Penalty on Masters of Ships having more than a certain Quantity of Tea, or Spirits, on board.*
[19 G. 3. c. 69. — 21 G. 3. c. 39.]

(l) *Persons lurking near the Coasts to assist in running Goods, &c.*
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(m) *Buying or receiving run Goods.*
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o) *Officers' Indemnity, &c.*
[11 G. 1. c. 30. — 9 G. 2. c. 35. — 19 G. 2. c. 34. — 19 G. 3. c. 69. — 26 G. 3. c. 77. — 57 G. 3. c. 87.]

(p) *Jurisdiction of Justices.*
[8 G. 1. c. 18. — 24 G. 3. sess. 2. c. 47. — 47 G. 3. sess. 2. c. 66. — 49 G. 3. c. 65. — 56 G. 3. c. 104.]

(q) *Proceedings on Trials of Seizures, &c.*
[12 G. 1. c. 28. — 9 G. 2. c. 35. — 23 G. 3. c. 70.]

(r) *Actions, Informations, &c. how to be commenced.*
[26 G. 3. c. 77. — 56 G. 3. c. 104.]

(s) *Mitigation of Penalties.*
[12 C. 2. c. 24. — 23 G. 2. c. 21. — 47 G. 3. sess. 2. c. 66. — 49 G. 3. c. 65. — 57 G. 3. c. 87. — 1 G. 4. c. 43.]

(t) *Persons indicted, &c. may be apprehended and bound to appear.*
[26 G. 3. c. 77. — 35 G. 3. c. 96.]

(u) *Condemnation of Seizures unclaimed.*
[57 G. 3. c. 87.]

(w) *Commissioners may order Vessels, &c. to be restored.*
[27 G. 3. c. 32. — 47 G. 3. sess. 2. c. 30. — 51 G. 3. c. 96.]

(x) *Treasury may restore Seizures or remit or mitigate Fines.*
[54 G. 3. c. 171.]

(y) *Allowance to Poor Persons confined for Debts or Penalties.*
[53 G. 3. c. 21.]

§ 1. (*a*) Duties, &c.

Under the word *Customs* is comprised every duty which is to be paid upon the importation or exportation of goods, wares, or merchandise. 6 *Bac. Abr.* 259. Customs.

Duties upon the importation or exportation of goods, wares, or merchandise, were perhaps at first imposed, for enabling the crown to make and maintain commodious ports and harbours, and to keep up a fleet for the protection of the ships of merchants against enemies and pir. tes. 6 *Bac. Abr.* 259. *See* 1 *Blac. Com.* 313. and *Dyer* 165. b.

After 10th May 1787 the rules annexed to the two *books* of *rates* of 12 *C.* 2. and 11 *G.* 1. are repealed by stat. 27 *G.* 3. *c.* 13. § 31. 27 G. 3. c. 13.

By stat. 59 *G.* 3. c. 52. § 1. after the 5th of *July* 1819, all the subsidies, customs, impositions, or duties whatever, respecting the revenue of customs, payable by virtue of any act then in force upon the importation or exportation of any goods, wares, or merchandise into or from *G. B.*, or upon any goods, &c. being brought or carried coastwise from port to port in the same, or upon any ship or vessel, according to the tonnage thereof, (except as thereinafter is provided) entering or clearing outwards or inwards, at any port within *G. B.*, and also all additional imposts or duties charged upon the product or amount of the several duties of customs, and the drawbacks allowed upon the exportation of any goods, &c. from *G. B.*, shall cease and determine; except in cases relating to the recovery of arrears, or of any fine, &c. incurred on or before the said 5th of *July* 1819. 59 G. 3. c. 52. Former duties repealed.

§ 2. Provided, that the act shall not extend to any duties payable to the city of *London*, or to any other city or town corporate within *G. B.*; or to any other special privilege or exemption to which any person, or body politic or corporate, is by law entitled; § 3., nor alter or affect the duties on ships or vessels granted by stat. 39 *G.* 3. *c.* lxix., nor by 45 G. 3. c. 10. § 4., nor by 55 *G.* 3. *c.* 57. § 5.; nor shall this act extend to alter the provisions of the acts for the union of *G. B.* and *Ireland*, § 24.; nor to affect the regulations of 43 *G.* 3. *c.* 132. and 45 *G.* 3. *c.* 87., for the warehousing of goods, &c., § 41., nor to charge with tonnage duty certain vessels employed in the fisheries on the coast of *G. B.* See stat. 4 *G.* 4. *c.* 24. Exceptions.

§ 6. And in lieu of the duties repealed there shall be raised and collected the several duties of customs respectively set forth in the tables (*b*) annexed to the act, and the several drawbacks allowed, as the same are set forth in the said tables. New duties.

§ 58. The new duties and drawbacks shall be levied and allowed in like manner as the old duties and drawbacks (unless hereby altered); and all penalties, fines, and forfeitures (unless expressly altered by this act) shall be recovered in the like manner as by How recovered. 59 G. 3. c. 52. Penalties, how recovered.

(*b*) These tables are not inserted, having no immediate reference to the office and practice of a magistrate or parish officer, for whose use this work is more particularly intended. This title, "Excise, &c." is already much complained of, as containing an immensity of matter which might safely be omitted. It is, however, one of such general interest and importance that it would be impossible to omit it, and if further curtailed, its utility might be considerably diminished. — Ed.

former acts directed; and all acts in force on 5th *July* 1819, relative to the customs, shall remain in full force, unless hereby altered.

Action when brought. § 59. Any action or suit, in pursuance of this statute is to be brought within three calendar months next after the fact committed, and laid in the county or place in which the cause of complaint arose; and the defendant may plead the general issue, and give the special matter in evidence; and in case of verdict, nonsuit, or discontinuance, or judgment on demurrer, shall have treble costs.

4 G. 4. c. 69. By stat. 4 *G.* 4. *c.* 69., certain duties of customs under the 59 *G.* 3. *c.* 52. of export duties on coals; and the duties on slate and stone carried coastwise are repealed, and new duties are substituted in lieu thereof.

4 G. 4. c. 72. By stat. 4 *G.* 4. *c.* 72. The several duties and drawbacks of customs chargeable and allowable in *Ireland*, on the importation and exportation of certain foreign and colonial goods, wares, and merchandise, are repealed, and other duties and drawbacks, equal to the duties and drawbacks chargeable and allowable thereon in *G. B.*, granted in lieu thereof. See also stats. 4 *G.* 4. *c.* 26. 30. 44. 57. 66. 77.

27 G. 3. c. 31. Goods landed before payment of the duties, shall be forfeited. By stat. 27 *G.* 3. *c.* 31. § 9. All goods, wares, and merchandise, which shall be unshipped, landed, or delivered, out of any vessel or boat, before the duties are fully paid or secured, shall be forfeited, together with the package containing the same, and may be seized by the officer of excise. And every person who shall unship, land, or deliver any such goods, for which the duties have not been paid or secured, or shall be aiding or assisting therein, or shall hide or conceal or receive into his custody any such goods, knowing the same to have been so unlawfully landed, shall forfeit treble the value thereof, to be estimated according to the highest rate goods of the best quality of that kind shall then sell for in *London.*

[This equally applies to the new duties as it did to stat. 27 *G.* 3. *c.* 13., for by § 58. of 59 *G.* 3. *c.* 52. the goods, &c. and vessels are liable to the same conditions, seizures, and forfeitures as heretofore, unless where altered by that act.]

§ 1. (*b*) Appointing and swearing Commissioners.

6 & 7 W. & M. c. 1. Appointing and swearing commissioners. N. B. Another oath is substituted by stat. 46 G. 3. c. 82. § 5. By stat. 6 & 7 *W. & M. c.* 1. § 5. When any commission shall be issued for constituting commissioners of the customs, two of them first named in the commission shall be sworn before the chancellor, or chief baron of the exchequer, or master of the rolls, *for the true and faithful execution, to the best of their knowledge and power, of the trust committed to their charge and inspection, and that they will not take or receive any reward or gratuity directly or indirectly, other than their salaries, and what shall be allowed them from the crown, or the regular fees established by law, for any service to be done in the execution of their employment in the customs, on any account whatsoever.*

§ 5. And every other of the commissioners and patent officers, and every of their deputies, clerks, or servants, and all other officers who shall have any employment in or about the customs, shall, at their admission, if it is within the ports of *London*, take the said oath before two commissioners; and elsewhere before

two justices of the peace in the county, town, or place, where his employment shall be; and every person not taking such oath shall forfeit his office. 6 & 7 W. & M. c. 1.

§ 6. And the persons hereby respectively authorised to administer the oath, shall certify the taking thereof to the next sessions to be held for the county or place where the oath was administered, to be kept amongst the records.

By stat. 5 *G*. 4. *c*. 79. Any subject of H. M. may take and enjoy any office in the revenue except that of Lord of the Treasury, without previously subscribing any declaration or taking any oath but that of allegiance to H. M. and the oath for due performance of the duties of such office. See Vol. III. "Office." 5 G.4. c.79.

§ 1. (*c*) Seizures, — Of what things and by whom.

By stat. 13 & 14 *C*. 2. *c*. 11. § 15. No ship or goods shall be seized as forfeited for unlawful importation or exportation, or non-payment of customs, but by officers of the customs. 13 & 14 C. 2. c. 11. In what cases, &c.

But by stat. 8 *G*. 1. *c*. 18. § 24. [made perpetual, except as to §§ 4, 5, & 14., by 49 *G*. 3. *c*. 20. § 4.] Spirituous liquors, *British* or foreign, and all foreign exciseable liquors forfeited, together with the casks or other packages, may be seized by any officer of the customs or excise, or by such persons as shall be deputed by warrant from the lord treasurer, or under-treasurer, or by special commission under the great or privy seal, but by no other person. Stat. 8 G. 1. c. 18.

By stat. 11 *G*. 1. *c*. 30. §§ 1. 2. It shall be lawful for the officers of excise to go on board any ship or vessel within the limits of any port in this kingdom, and to continue on board, and rummage and search, as the officers of customs now do, for arrack, rum, brandy, or other exciseable liquors, and for coffee, tea, cocoa-nuts, chocolate, and cocoa-paste; and to seize all such of the said goods there found as by law shall be forfeited, together with the package containing the same; and to seize such of the said goods, as before due entry, and without paying or securing the duties, shall be found unshipping or unshipped to be laid on land, together with the package containing the same. If any person shall obstruct the officers in the execution of the powers given by this act, he shall forfeit 100*l*. 11 G. 1. c. 30. Officers of excise may go on board ships to search as custom officers. Obstructing officers.

And by stat. 33 *G*. 2. *c*. 9. § 16. Officers of excise as well as those of the customs may seize all ships, vessels, boats, wherries, pinnaces, barges, or gallies, liable to be forfeited, and proceed to condemn the same as the officers of the customs may do. Such ships, &c. after condemnation, shall be burnt, destroyed, or used, and the tackle, furniture, and apparel thereof, disposed of and applied by the commissioners of excise and their officers, in like manner as is directed with respect to the commissioners of customs and their officers.

And by stat. 9 *G*. 3. *c*. 6. § 1. The officers of excise may seize horses or other cattle and carriages used in removing, carrying, or conveying away brandy, arrack, rum, spirits, and strong waters, (customs and other duties not being first paid or secured) and proceed to condemnation thereof, in the same manner as officers of the customs may do.

By stat. 24 *G*. 3. sess. 2. *c*. 47. § 29. After reciting that whereas by stat. 21 *G*. 3. *c*. 55. § 20. and other subsequent acts, the officers Officers of the customs em-

powered to seize tea and spirits. 24 G.3. sess. 2. c.47.

of excise are empowered to seize tea and spirits removing without permits, together with the vessels, boats, horses, and carriages used in removing thereof; it is enacted, that the officers of the customs shall have the like powers to seize and prosecute any such tea or spirits so removed or removing.

See also stats. 9 *G.* 2. *c.*35. § 29. — 23 *G.* 2. *c.*21. § 28. 34. — 26 *G.*3. *c.*40. § 23. 27. — 26 *G.*3. *c.* 59. § 43. 45. — 29 *G.* 3. *c.*68. § 148, 149. — 38 *G.*3. *c.* 89. § 139. — 41 *G.*3. *c.*91. § 6. — 42 *G.*3. *c.*93. § 18.—45 *G.*3. *c.*121. § 10. 16, 17. and 47 *G.* 3. sess. 2. *c.* 66. § 16. 30.

50 G. 3. c. 53.

By stat. 50 *G.* 3. *c.* 53. § 2. 16. It shall be lawful for the officers of excise to go on board any ship or vessel within the limits of any port in *G. B.*, or four leagues of the coast thereof, and to continue on board, and to examine and search for malt, and to seize all malt there found as by law shall be forfeited, with the packages, and also the ship or vessel, if the same shall be forfeited on account of such malt: and if any person shall obstruct the officers in the execution of the powers given by this act, he shall forfeit 100*l.*

56 G.3. c. 104. Officers of customs to have like power as excise officers, &c. Excise officers to act as officers of customs.

By stat. 56 *G.*3. *c.* 104. § 1. Every officer of customs shall have the like powers for the examination, seizure, detention, removal, and prosecution of any ship, boat, or vessel, cart or carriage, horse or cattle, or any goods whatsoever, forfeited under any law of excise, as are or shall hereafter be granted, or be exercised by any officer of excise; and every officer of excise shall have the like powers for the examination, seizure, detention, removal, and prosecution of any ship, boat, or vessel, cart or carriage, horse or cattle, or goods whatsoever, forfeited under any law relating to the customs, as are or shall hereafter be granted, or be exercised by any officer of customs.

Seizures by officers of the army or navy on half pay.

§ 2. It shall be lawful for any officer of the army or navy, on half pay, who shall be authorised by warrant from the lords of the treasury, or by a deputation from the commissioners of customs or excise in *England*, *Scotland*, or *Ireland*, to seize within such limits as shall be specified in such warrant or instrument, any wine, spirituous liquors, tea, or tobacco, or any prohibited *East India* or *French* goods, or any goods specified in such warrant or instrument, which may be subject to seizure under any law of customs or excise, or any vessel, boat, horse, cattle, or carriage used in the importation or removal of such goods; and all the powers contained in any act in relation to the seizure of any such goods, &c. by any officer of customs or excise, or to the arresting or detaining of any men liable to be arrested or detained under any act for the prevention of smuggling, shall extend to the officers so authorised, and to all goods or articles they shall seize.

§ 3. Imposes a penalty of 500*l.* on such officers making collusive seizures, or taking bribes; as also on persons offering bribes.

Collusive seizures: bribes: how such seizures shall be prosecuted.

§ 4. Every such seizure shall be prosecuted and disposed of under the direction of the commissioners of customs or excise in *England* and *Scotland*, in the same manner as if made by any officer of customs or excise; and all penalties, forfeitures, and things in any act relative to the seizure of the like goods by officers of the customs or excise; and all powers, exemptions, privileges, and protections in relation to any acts done by officers of the customs or excise, shall extend to the officers on half pay so authorised.

§ 5. Nothing in this act shall give power to such officers on half pay to seize any ships or goods liable to forfeiture under the navigation acts.

By stat. 57 *G*.3. *c*.87. § 4. All the provisions, powers, exemptions, and privileges in 56 *G*.3. *c*.104. relating to officers of the army or navy on half pay, shall extend to and be exercised by persons appointed by warrant of the treasury, or by the commissioners of customs or excise in *England*, *Scotland*, or *Ireland*, to make such seizures as are in the said act mentioned, and who shall be employed to act in or with the boat service for the prevention of smuggling.

57 G. 3. c. 87. Provisions of 56 G. 3. c. 104. extend to persons appointed by treasury or customs, to make seizures.

§ 20. It shall be lawful for the commissioners of customs in *England*, or any four of them, or for the commissioners of customs in *Scotland*, or any three of them, to grant their deputation to any person to make seizures of wine, spirituous liquors, tea, or tobacco, or any prohibited *East India* or *French* goods, or any other goods specified in such deputation, which may be subject to seizure under any law relating to the customs or excise, or any vessel, boat, horse, cattle, or carriage used in the importation or removal of such goods, although such person shall not be appointed to any office of the customs at any specific port. And such person may make seizures as any officers of customs, and shall be subject to the like penalties as officers of customs: and all seizures made by such persons shall be prosecuted and recovered as seizures made by officers of customs or excise.

Commissioners of customs may grant deputations to persons to make seizures.

§1. (*d*) Rewards to Persons seizing.

By stats. 56 G. 3. c. 104. § 6. and 1 G. 4. c. 43. § 1. For the further reward and encouragement of officers of the army, navy, and marines, or officers acting under the orders of the lord high admiral, or commissioners for executing the office of lord high admiral of the U. K. of *G. B.* and *Ireland*, and of officers on half pay, and of all officers acting under the orders of the commissioners of customs or excise in *England*, *Scotland*, or *Ireland*, for the prevention of smuggling, and of other persons giving information of any smuggling transaction, in lieu of the rewards now payable, the following rewards shall be allowed in respect of all seizures of spirits, tobacco, and snuff, under any law of customs or excise now in force, at sea, or for being unshipped or landed without payment of the duties of customs or excise payable on the importation of such goods, wares, or merchandise, or the importation of which shall be prohibited; viz. If any such officer making any such seizure at sea shall also arrest and detain all the persons who shall be or shall have been employed in navigating the ship, boat, or other vessel in or on board of which such goods, &c. shall be, and shall have been imported and brought from parts beyond the seas; and shall also seize and secure such ship, boat, or vessel; or making such seizure on shore, shall also arrest and detain every person who shall be unlading, removing, carrying, or concealing such goods, &c. landed without payment of duty, or prohibited, and then seized: and also seize and secure the cart and other carriages, and horse and horses and cattle used for removing and carrying the same; and such officer shall take and convey, or cause every such person so arrested, stopped, or detained, to be taken or conveyed before

56 G. 3. c. 104 § 6. 1. G. 4. c. 43. § 1.

Officers making seizures of spirits, tobacco or snuff, and detaining ship and crew, etc. shall be entitl to seven-eight of the value after deducting seven per cent. for costs.

1 G. 4. c. 43.

one or more of H. M.'s justices of the peace, so that he and they may be dealt with according to law; then, and in every such case, such officer or officers making such seizure shall be entitled to and shall be paid seven-eighths of the value of such goods, after deducting seven *per cent.* on account of the costs and charges incurred in the seizure, condemnation, and disposal of the said goods; and in case some or one only of such persons shall be seized, arrested, or detained, and brought before such justice or justices, and shall, if subjects of his majesty, be found fit for H. M.'s naval service, and duly transferred thereto, and the rest shall unavoidably escape, and the ship, boat, or other vessel, in which such goods shall have been imported or brought from parts beyond the seas, shall also be seized and secured, such officer or officers making such seizure shall be entitled to, and shall be paid, three-fourths of the value of such goods, after such deduction; and in case such officer or officers making such seizure shall arrest, and detain one or more of the men from whom the same shall be seized, and shall produce such person or persons before the justice or justices, to be dealt with according to law; and the person or persons so arrested shall, if subjects of H. M. be found fit for H. M.'s naval service, and be duly transferred, then and in such case such officer or officers shall be entitled to and shall be paid two-thirds of the value of such goods, with such deduction; and in case such officer or officers making any such seizure shall also seize and secure the ship, boat, or other vessel, in which such goods shall have been imported or brought from parts beyond the seas, or the cart and other carriage or carriages, horse or horses, or cattle as aforesaid, but shall not also stop, arrest, and detain, and produce before the justice or justices, such persons, or some or one of them, fit for H. M.'s naval service, if subjects of H. M., then and in such case such officer or officers making such seizures shall be entitled to and shall be paid a moiety of the value of such goods, after the deduction aforesaid; and in case any such officer or officers shall make seizure of any such goods, &c., and shall neither seize and secure the ship, boat, or other vessel in which such goods shall have been imported or brought from parts beyond the seas, or arrest, detain, and produce before the justice or justices, and if a subject or subjects of H. M., deliver over for the use of H. M.'s navy, any of the persons aforesaid, then and in such case such officer or officers making such seizure of such goods, &c., only shall be entitled to and shall be paid, after such deduction as aforesaid, one-third part of the value of such goods.

In what cases they shall be allowed three-fourths of the value; two-thirds of the value; one half of the value; and one-third of the value.

§ 2. In every case of seizures of spirits, tobacco, and snuff, found at sea and brought into port by persons not in the service of the revenue, and delivered to any officer or officers for seizure; and in every case of seizure of spirits, tobacco, and snuff, on information of the same having been sunk in the sea, or floating thereon; the officer or officers making such seizures shall be entitled to and shall be paid one-fourth part of the value of such goods, after such deduction as aforesaid; any law, &c. to the contrary notwithstanding: Provided always, that it shall be lawful for the lords commissioners of H. M.'s treasury for the time being, upon proof being made to their satisfaction, that the failure of any such officer or officers upon making any such seizure, in arresting all or any of the persons aforesaid, and producing them or him before such justice or justices, or delivering them or him over for the use of H. M's navy, or seizing and securing such ship, boat

Seizures of spirits, tobacco, and snuff, found at sea by persons not in the revenue service, officers entitled to one-fourth of the value.

Treasury may grant further reward where exertion was not wanting to make the seizure more complete.

or other vessel, was not owing to any want of exertion on the part of such officer or officers, but was solely occasioned by resistance, or from the violence of the sea, darkness of the night, or other insurmountable obstacles, to grant to such officer or officers such further part of the value of such seizure, as by them may be deemed expedient in that behalf, or to give such other directions relative thereto as by them may be deemed advisable. 1 G. 4. c. 43.

By stat. 56 *G.* 3. *c.* 104. § 7. It shall be lawful for the lords of the treasury, or for the commissioners of customs or excise, under their direction, to order so much of the reward or share of any such seizures, or of the value thereof, granted to the officer making the seizure, as they may deem proper, to be paid to the person by whose information, or through whose means or assistance such seizure may have been made, and every such reward or share of seizure, payable to officers and men of the army and navy, shall be distributed in such proportions as H. M. shall direct by order in council, or proclamation. 56 G. 3. c. 104. Reward to informer. Shares of seizures distributed according to proclamation.

§ 11. All costs and expences attending the seizure, detention, custody, removal, prosecution, condemnation, and sale of any ship, boat, vessel, carriage, horse, cattle, or goods, forfeited under any law of customs or excise, shall, except in the cases herein mentioned, be paid out of the gross proceeds of such seizure, whenever the same shall be sold; and in case any such goods shall not be sold, but be destroyed, or otherwise disposed of by order of the lords of the treasury, such costs and expences shall be paid out of H. M.'s share of customs or excise seizures. Expenses to be paid out of gross proceeds, except, &c.

By stat. 57 *G.* 3. *c.* 87. § 1. All seizures made by any officer of customs, or of the navy, or acting under the orders of the admiralty, (not being an officer of the army or marines, or any military or naval officer on half-pay, or any officer or person employed in the smuggling preventive boat service, either separately or jointly with any other person except an officer of excise, or of the army or marines, or any military or naval officer on half pay, or any officer or person employed in the smuggling preventive boat service), shall be lodged and secured under the provisions of the acts 45 *G.* 3. *c.* 121. and 47 *G.* 3. *sess.* 2. *c.* 66. and be disposed of or prosecuted for condemnation by order of the commissioners of customs; and such commissioners shall direct and pay all rewards for making such seizures, and all costs and expences relating thereto: subject nevertheless to any special order of the treasury touching the distribution of any such reward. 57 G. 3. c 87. Seizures by officers of customs, &c. to be secured under provisions of 45 G. 3. c. 121 & 47 G. 3. sess. 2. c. 66. Commissioner to direct payment of rewards, subject to orders of treasury.

Stat. 3 *G.* 4. *c.* 110. § 3. Enacts that every seizure made by any officer or officers of H. M.'s customs, or person or persons acting under the orders or directions of the commissioners, shall, together with the ships and other vessels, carts and other carriages, horses and other cattle seized therewith, or on account thereof, be delivered over to and lodged and secured under the provisions of the acts 45 and 47 *G.* 3., and be disposed of or prosecuted for condemnation by order and under the directions of the said commissioners of customs; and that such commissioners shall and are hereby authorized to direct and pay all rewards for the making of every such seizure, and of all costs and expences relating thereto, in the manner directed by the several laws in force for the prevention of smuggling. 3 G. 4. c. 110. Seizures of goods, togethe with vessels. &c. to be delivered to com missioners of customs for condemnation who may direc payment of re wards.

By stat. 47 *G.* 3. *sess.* 2. *c.* 66. § 23. In all cases of seizures 47 G. 3. sess. c. 66.

Distribution of rewards to officers of the army, &c. may be regulated by H. M.

made by officers, warrant or non-commissioned officers, or privates of the army, and in all cases of such officers or privates who shall assist any officers of customs or excise in making, securing, or guarding seizures, H. M. in council may direct in what manner and proportions the rewards given by this or any other act relating to the customs or excise, or for the prevention of smuggling, shall be divided amongst the officers and privates making, or assisting in making the seizure, and the officers and privates of the regiment or corps to which they belong.

57 G. 3. c. 87. Seizures by officers of excise, &c. to be delivered over to the proper officer, and the commissioners of excise shall direct payment of rewards, subject to the orders of the treasury.

By stat. 57 *G.* 3. *c.* 87. § 2. Such seizures only as shall be made for any offence against any law or laws of customs or excise passed for the prevention of smuggling, and where the person or persons engaged or concerned therein is or are by any such law or laws liable, if a *British* subject, to arrest and detention, shall be deemed and taken to be seizures in respect of which the further rewards directed by stat. 56 *G.* 3. *c.* 104. (See 1 *G.* 4. *c.* 43. *ante*, p. 7.) shall apply and be paid; and all spirits so seized for any such offence, and the ships and other vessels, carts and other carriages, horses and other cattle, seized therewith or on account thereof, except by any customs officer or officers, or any officer or officers of H. M.'s navy, or acting under the orders of the lord high admiral, or of the commissioners for executing the office of lord high admiral aforesaid, either separately or jointly with any other person or persons, not being an excise officer, or an officer of H. M.'s army or marines, or any military or naval officer on half-pay, or any officer or person employed in the smuggling preventive boat service as aforesaid, shall be delivered over to and lodged with the proper officer of excise, and be disposed of or prosecuted to condemnation by order of the commissioners of excise, as directed by the said act of the 56th *G.* 3.; and such commissioners shall direct and pay all rewards for the making such seizure and seizures, except as aforesaid, (See § 1. *ante*, 9.) and of all costs and expences relating thereto, subject nevertheless to any special order and direction touching the distribution of any such reward or rewards which shall be given by the commissioners of H. M.'s treasury before such distribution has been made.

Rewards granted by 56 G. 3. c. 104. do not take away the tonnage rewards.

By stat. 58 *G.* 3. *c.* 76. § 2. It is declared and enacted, that the rewards granted by the act of 56 *G.* 3. *c.* 104. (See 1 *G.* 4. *c.* 43.) do not repeal or take away, and shall not be deemed or construed to repeal or take away, the said tonnage rewards respectively granted by the acts of the 28 *G.* 3. *c.* 34., 29 *G.* 3. *c.* 68., and 47 *G.* 3. *c.* 66.

59 G. 3. c. 121.

By stat. 59 *G.* 3. *c.* 121. § 5. The commissioners of customs and excise are empowered to direct any sum not exceeding 25*l.* to be paid to any person or persons who shall have informed against any persons convicted of making signals for smuggling vessels contrary to stat. 47 *G.* 3. *c.* 66.

Where the charges of prosecution in seizures of carriages and horses shall exceed the produce, the excess may be paid

And by stat. 59 *G.* 3. *c.* 121. § 7. "In all cases wherein the charges of prosecuting and condemning carts and other carriages, and horses and other cattle, seized for offences against the laws for protection of the revenue of customs or excise, shall exceed the produce arising from the sale thereof, it shall and may be lawful for the commissioners of H. M.'s customs in *England*, or any four or more of them, and also for the commissioners of H. M.'s customs in *Scotland*, or any three or more of them respectively, if

they shall think proper, to order such part of the expences arising either from the seizure, custody, removal, detention, prosecution, or condemnation of any such cart or other carriage, horse or other cattle, as shall exceed the produce arising from the sale of such seizure, to be defrayed out of the produce arising from the sale of the goods on account of which they shall have been so seized: provided always nevertheless, that this act shall not extend to any case wherein the officers of the customs shall by any law now in force or hereafter to be made, be entitled to a gross sum of the goods seized by him." out of the sale of the goods. Not to extend to cases where officers are entitled to a gross share of goods seized.

By stat. 59 *G.* 3. *c.* 6. In all cases wherein the commissioners of the customs or excise of *England*, *Scotland*, and *Ireland*, shall award any sum not exceeding 20*l.*, to any officer or officers, non-commissioned officers, petty officers, seamen, or privates, of H. M.'s army, navy, or marines, or acting under the orders of the lord high admiral, or of the commissioners for executing the office of the lord high admiral, of the U. K. of *G. B.* and *Ireland*, for any person arrested, convicted, or committed to prison for any breach of the laws now in force for the prevention of smuggling, the same shall be divided and distributed in such proportions, and according to such rules, regulations, and orders, as H. M. shall by order in council, or royal proclamation, be pleased to direct and appoint. 59 G. 3. c. 6. Rewards not exceeding 20*l.* awarded by commissioners of customs or excise to officers, &c. of army or navy, to be divided according to such regulations as H. M. shall appoint by order in council.

By stat. 59 *G.* 3. *c.* 121. § 13. Upon proof being made to the satisfaction of the lords commissioners of H. M.'s treasury, or any three of them, that any such officer shall have acted collusively or negligently, either in making any seizure, or in the omission or failure to make any seizure, it shall be lawful for them to direct that the whole or any part of the officer's proportion of such seizure shall be forfeited, and be applied in the same manner as H. M.'s share of seizures. 59 G. 3. c. 121.

§ 1. (*e.*) Shipping or Landing Goods without Warrant.

By stat. 13 & 14 *C.* 2. *c.* 11. § 7. If any goods shall be laden or taken in from the shore into any bark, hoy, barge, lighter, wherry, or boat, to be carried aboard any vessel outward bound, or laden or taken in out of any ship coming in from foreign parts without a warrant and presence of an officer of the customs; such bark, &c. shall be forfeited; and the wharfinger offending shall forfeit 100*l.*; and the master, purser, boatswain, or other mariner of any ship inward bound, consenting thereunto, shall forfeit the value of the goods so unshipped. 13 & 14 C. 2. c. 11. Shipping or landing goods without warrant.

§ 7. And if any carman, porter, waterman, or other person shall assist in the taking up, landing, shipping or carrying away any such goods, such person being apprehended by warrant of any justice of the peace, and the same being proved by the oath of two witnesses, the said offender for the first offence shall by the justice be committed to the next gaol, there to remain till he find surety of the good behaviour for so long time until he be discharged by the lord treasurer, chancellor, under-treasurer, or barons of the exchequer; and for the second offence he may, by any justice of

the peace as aforesaid, be committed to the next gaol, there to remain for two months without bail, or until he shall pay to the sheriff 5*l.* for the king's use, or until he shall be discharged by the lord treasurer, &c. of the exchequer.

3 Ann c.13. Goods relanded after drawback.

By stat. 8 *Ann. c.* 13. § 16. If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debentures to be made forth for any such drawback, shall not be really and *bonâ fide* shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of distress to save the goods from perishing, which shall presently be made known to the principal officer of the port, then not only all such certificate goods shall be forfeited, but also the person relanding the same or concerned therein, or to whose hands they shall knowingly come, or by whose privity they are relanded, shall forfeit double amount of the drawback, together with the vessels, boats, horses, cattle, and carriages, used in landing, removing, or conveying the same; half to the king, and half to him that shall inform, seize, or sue in the courts at *Westminster.*

But by stat. 8 *G.* 1. *c.* 18. § 16. the boats, cattle, and carriages, may be recovered before the justice of the peace. *Vide post.*

3 An. c.7. Unshipping with intent to and.

By stat. 8 *Ann. c.* 7. § 17. If any goods shall be unshipped, with intention to be landed, (the duties not being first paid or secured), or if any prohibited goods shall be imported, then not only the said goods shall be forfeited, but also the persons assisting or concerned in the unshipping, or to whose hands they shall knowingly come, shall forfeit treble value, together with the vessels, boats, horses, and other cattle and carriages used in the landing and conveyance thereof; half to the king, and half to him that shall seize or sue.

19 G.3. c.69.

And by stat. 19 *G.* 3. *c.* 69. § 8. Any officer of the customs or excise, and their assistants, may arrest persons who shall be found aiding in unshipping, to be laid on land, any uncustomed or prohibited goods; and shall forthwith carry them before a justice residing near; who shall, if he see cause, commit the offender to the next county gaol, there to remain without bail till the next general quarter sessions. In which case (by § 11.), the officer conveying such offender before the justice, shall enter into recognizance in 40*l.* to appear and prosecute. And (§ 12.) the justices at such sessions shall hear and determine the offence, and in lieu of any other punishment imposed by any former act are authorized and required to commit the offender to hard labour in the house of correction, for a term not exceeding three years, nor less than one. And (§ 11.) the commissioners shall order the charges of prosecution to be paid by the receiver-general of the customs or excise respectively.

53 G.3. c.105. For preventing clandestine exportation of goods.

By stat. 53 *G.* 3. *c.* 105. § 9. If any goods, &c. prohibited to be exported, shall be laden or shipped or put on board any vessel or boat with the intent to be laden or shipped for exportation, or shall be brought to any quay, wharf, or other place in *G. B.*, in order to be laden or put on board any ship, vessel, or boat, for the purpose of being exported; or if any goods, &c. which are prohibited to be exported shall be found in any package produced to the officers of the customs as containing goods not so prohibited, in every such case, not only all such prohibited goods, but also all

other goods, wares, and merchandize packed therewith, shall be forfeited and may be seized by any officer of the customs.

§ 1. (f) Writs of Assistance and Warrant.

By stat. 13 & 14 *C.* 2. *c.* 11. § 5. Any person authorized by writ of assistance out of the exchequer, may take a constable or other public officer near, and in the day-time enter any house or place, and in case of resistance break open doors, chests, and other package there to seize, and from thence to bring any goods prohibited and unaccustomed, and to secure them in the king's storehouse.

13 & 14 C. 2. c. 11. Power to search.

And by stat. 54 *G.* 3. *c.* 46. reciting the provisions of 13 & 14 *C.* 2. *c.* 11. § 5., which by 5 *Ann. c.* 8. are extended to *Scotland*, it is enacted, that the writs of assistance under the seal of H. M.'s court of exchequer in *England* and *Scotland* respectively, which on or before the passing of this act have been issued, or at any time hereafter may be issued, during the reign of his present majesty, in pursuance of the said recited acts, shall not be held or declared to be vacated or determined by the death or resignation of all or any of the commissioners named therein, or in consequence of the revocation of the patent by which the said commissioners were constituted and appointed; but every such writ shall have full force and operation, and shall be valid and effectual for and during the whole of the reign of his said majesty; and every writ of assistance which may be issued during any succeeding reign shall in like manner be determinable only upon the demise of the crown; and all officers and ministers, vice-admirals, justices of the peace, mayors, sheriffs, constables, bailiffs, headboroughs, and all other the officers, ministers, and subjects mentioned in any such writ of assistance, are to pay due obedience thereto accordingly. See also stat. 42 *G.* 3. *c.* 93. § 17. *post.*

54 G. 3. c. 46. Duration of writs of assistance.

§ 1. (g) Prohibited Goods may be seized.

By stat. 6 *G.* 1. *c.* 21. § 39. If prohibited or customable goods shall be found by any officer of the customs in a bark, hoy, lighter, barge, boat, or wherry on the water; or coming directly from the water-side, without the presence of an officer; or if such goods shall, on information of a credible person, be found in any house or other place, on search made as by stat. 13 & 14 *C.* 2. *c.* 11., such officer may stop and put the said goods in the king's warehouse in the port next to such place, until the claimer shall make proof on oath before the commissioners, if it be in the port of *London*, that the duties have been paid or secured, or that the same had been brought in a lawful way of trade, and that such person verily believes the duties to have been paid, or that the said goods had been compounded for, or condemned in the exchequer, or been otherwise delivered by writ of that court, and that the prohibited goods had been compounded for or condemned, or otherwise delivered as aforesaid; in which case, the goods shall be delivered without delay or charge. And if the goods be stopped in any other port, the claimer shall make the like proof, and deliver the same to the collector, or in his absence to one of the other principal officers of the customs of the port, which proof shall

6 G. 1. c. 21. Goods passing may be stopped and seized.

6 G.1. c.21. forthwith be transmitted to the commissioners for their directions touching the delivery of the goods, or for seizing and prosecuting the same.

§ 40. Provided such proof be made within ten days after such stopping; in failure whereof the goods may be seized and prosecuted as by the laws against the importation of prohibited or uncustomed goods is provided.

On prosecutions proof of duties paid to lie on the claimer.

§ 41. If on such prosecution, where no application hath been made to the commissioners or officers aforesaid, and not otherwise, the property of the goods shall be claimed, and any question shall arise whether the duties were paid or secured, or the goods had been compounded for or condemned, or otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recover his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. See *post*, Proceedings, &c.

When the seizer shall be liable to an action.

§ 42. Where the claimer shall make proof, either by oath before a justice or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner or claimer shall receive any damages by such stop, he shall receive his goods, and he may bring his action for his reasonable damages.

§ 43. But the officer who shall stop the goods may, if he please, seize and prosecute, notwithstanding the directions of the commissioners; in which case he shall be liable to be sued by the owner for recovery of the value of his goods with full costs; or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages.

9 G.2. c.35. Foreign goods taken in at sea, within four leagues of the British coast.

By stat. 9 *G.*2. *c.*35. § 23. If any foreign goods shall by any ship or boat be taken in at sea, or put out of any ship within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a lawful reason, of which the person having charge of such ship so taken in, shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive), the same shall be forfeited, and the person having such charge, and every person aiding or concerned therein, shall forfeit treble value; and the vessel into which the same shall be taken shall be forfeited, if it exceed not 100 tons; and the person having the charge of the vessel out of which they are taken shall also forfeit treble value; half to the king, and half to him that shall seize or sue.

19. G.3. c.69. Forfeiture of such ship having prohibited goods on board.

And by stat. 19 *G.*3. *c.*69. § 2. When any tea, coffee, foreign spirituous liquors, or any goods whatsoever, are liable to forfeiture for being found on board any ship coming from foreign parts, at anchor, or hovering within the limits of any port, or within two leagues of the coast, or for having been discovered to have been within the limits of any port contrary to any act of parliament then in force; the ship, if coming from any part of Europe, together with her tackle and furniture, shall be forfeited, provided such ship doth not exceed 200 tons.

9 G.2. c.35. And by stat. 9 *G.*2. *c.*35. § 29. Any officer of the customs or excise (producing his warrant of deputation, if required) may go on board any coasting vessel, and search for prohibited and uncustomed goods, and continue on board during the vessel's stay within

the limits of the port; and if any person shall obstruct him, he shall forfeit 100*l*.

By stat. 5 *G*.3. *c*.43. § 38. Where any vessel coming from foreign parts, having on board 20lbs. weight of coffee, or any goods liable to forfeiture by any act now in force on being imported, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the master or other person having charge of the vessel shal. give notice to or make proof before the collector or other chief officer of the customs, immediately after the arrival of the vessel in such port; all such goods, together with the chests, boxes, casks, and other package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also, with her tackle, furniture, and apparel, shall be forfeited, provided such vessel doth not exceed the burden of 50 tons: (and by 3 *G*. 3. *c*. 22. and the 5 *G*. 3. *c*. 43. § 38. half the produce, after the sale thereof (charges deducted), to be to the king, and half to the officer who shall make the seizure.)

5 G.3. c.43. Vessels hovering within *two* leagues of the coast.

And by stat. 24 *G*. 3. *sess*. 2. *c*.47. § 1. If any vessel shall be found at anchor, or hovering within the limits of any port, or within four leagues of the coast, (*a*) or shall be discovered so to have been, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity (of which the person in charge shall give notice and make proof to the proper officer), having on board any brandy or other spirituous liquors in any vessel or cask not containing 60 gallons at least (except only for the use of the seamen, not exceeding two gallons for each,) or having on board any wine in casks (provided such ship having wine on board shall not exceed 60 tons burden), or having on board 6lbs. weight

24 G.3. sess. 2. c.47. Hovering within *four* leagues.

(*a*) *Souden's case*, *H*. 1 & 2 *G*.4. 4 *B*. & *A*. 294. In this case, the return to the *habeas corpus* stated that the prisoner, on the 11th of *September*, 1820, was duly convicted for that he being a subject of H. M. was found on board a certain ship or vessel, to wit, a passage vessel called *The Rose in June*, the said vessel being liable to forfeiture under the provisions of two acts of parliament, viz. 24 G.3. *sess*.2. *c*.47. § 1. and 42 *G*. 3. *c*.82. § 1., for having, after the passing of those acts and of the 45 *G*.3. *c*.121., been found at the fish market within the limits of the ancient town of *Rye*, in the county of *Sussex*, having on board divers large quantities of East India silk handkerchiefs, &c. It then stated that the prisoner was adjudged, in consequence thereof, to forfeit the sum of 100*l*, and that for default of payment he was committed to the common gaol. *Lawes* Serj. objected to this return, that the offence was not sufficiently stated. This depends on the 24 *G*.3. *sess*.2. *c*.47., by which it is enacted, that if any ship or vessel shall be found at anchor or hovering within the limits of any of the ports of this kingdom, or within four leagues of the coast thereof, having on board any goods liable to forfeiture, such ship shall be liable to forfeiture. Here it is only stated, that the ship was found in the fish market within the limits of the ancient town of *Rye*. Unless the ship be liable to forfeiture, the defendant has not incurred any penalty. The Court (after hearing counsel, in support of the return, who cited *Rex* v. *Hawkins*, Fort. 272. and *Rex* v. *Elwell*, Bart. 2 Str. 794.) were of opinion, that the objection was well founded, the *corpus delicti* not being sufficiently stated, inasmuch as it was quite consistent with the return that the vessel might be in the fish market in the ancient town of *Rye*, but drawn up on the land, which would clearly not be a case within the statute. *Per Cur*. The prisoner must be discharged. See also stats. 42 *G*.3. *c*. 82. § 1. 45 *G*.3. *c*. 121. § 1. 47 *G*.3. *sess*. 2. *c*. 66. § 8. 57 *G*. 3. *c*. 33. § 1. 59 *G*. 3. *c*. 121.

Where a return to a *habeas corpus* stated that a vessel, with smuggled goods on board, was found at the fish market, within the limits of the ancient town of Rye: Held, that it did not come within stat. 24 G.3. sess. 2. c.47. § 1.

24 G.3. sess. 2. c. 47. of tea, or 20lbs. weight of coffee, or any goods whatever liable to forfeiture, not only all such goods but also the ship, with all her guns, &c. and tackle, shall be forfeited.

§ 2. Provided, that in any suit for forfeiture, evidence may be received to shew, from the small quantity of goods, and other circumstances, that they were on board without the privity of the owner or master, or other person in charge; and on proof thereof, and that there was no want of reasonable care, such vessel shall not be forfeited, if of more than 100 tons burden.

§ 3. But the goods so found on board, whether with or without the privity of the master, shall be forfeited; and the person in whose charge or possession they shall be found shall forfeit treble value.

§ 1. (*h*) Ships hovering on the Coasts, having Spirits, Tea, Tobacco, or Snuff on board.

45 G.3. c.121. Certain vessels coming from foreign parts, found in any part of the British or Irish Channels, or High Seas, within a certain distance of the coasts of G. B. or Ireland, having spirits, tea, tobacco, &c. on board, in casks, or packages of less content than herein mentioned, the whole to be forfeited:

By stat. 45 *G.* 3. *c.* 121. § 1. If any vessel or boat coming from foreign parts, and belonging wholly or in part to H. M.'s subjects, or whereof one-half of the persons on board shall be subjects of H. M., other than a ship or square-rigged vessel (see 47 *G.* 3. *sess.* 2. *c.* 66.), shall be found in any part of the *British* or *Irish* Channels, or on the high seas within one hundred leagues of the coasts of *G. B.* or *Ireland*, or shall be discovered to have been within the said limits, having on board any foreign brandy, rum, geneva, or other spirits in casks of less content than sixty gallons, (except for the use of the seamen, not exceeding two gallons for each man); or any tea exceeding six pounds; or any tobacco or snuff in any package containing less than 450 pounds, (except loose tobacco for the use of the seamen, not exceeding five pounds for each man, and except tea, or manufactured tobacco or snuff shipped for exportation as merchandize from *Ireland*); all such foreign brandy, rum, geneva, or other spirits, tea, tobacco, or snuff, with the casks or packages, and such vessel or boat, with the guns, furniture, ammunition, tackle and apparel, shall be forfeited, and may be seized by any officer of the navy or marines, customs or excise.

Vessels not coming from foreign parts, but taking such articles on board from vessels so coming, forfeited in like manner.

§ 2. If any vessel or boat, not coming from foreign parts, shall, on the high seas, take on board from any ship or vessel from foreign parts any foreign brandy, rum, geneva, or other spirits, in any package of less content than as aforesaid, or any tea whatever, or any tobacco or snuff in less quantity than as aforesaid, such vessel or boat shall be deemed coming from foreign parts, within the meaning of this act; and all such goods, with the casks and packages, and such vessel or boat, with the guns, &c. shall be forfeited, and may be seized by any officer of the navy or marines, customs or excise.

Extension of powers of officers of customs and excise to vessels and goods liable to forfeiture under this act.

And by § 10. All the powers, provisions, penalties, and forfeitures in any act now in force, for the protection of the revenue of customs or excise, and for the prevention of smuggling, or relating to ships or boats hovering, or found or discovered to have been within certain distances of the coast of *G. B.* or *Ireland*, and to any goods laden on board them, so far as the same are applicable, and not by this act altered, shall extend to all ships, boats, and goods made liable to forfeiture under this act.

By § 7. Every person being a subject of H. M., found or taken on board, or discovered to have been on board any ship or boat liable to forfeiture, under this or any other act, for being found, or having been at anchor, or hovering within any such distances of any of the dominions of H. M., with such goods on board as subject such ship, or boat, or goods, to forfeiture, and who shall not prove that he was only a passenger; and every person found assisting in unshipping to be laid on land, or found carrying, concealing, or assisting in carrying or concealing any foreign brandy, rum, geneva, or spirits, subject to forfeiture, shall forfeit treble the value of the goods found or taken from such person, or the sum of 100*l.* (*a*) at the option of the commissioners of the customs or excise, who shall direct any prosecution against him, and one-half of such penalty shall go to the persons taking and detaining such person, or informing for the same; and such person shall also be liable to such other punishment as by any law may be inflicted on him. (See stat. 3 *G.* 4. *c.* 110. *post.*) 45 G. 3. c. 121. Penalty on persons found on board vessels liable to forfeiture, or assisting in unshipping or concealing spirits, &c.

§ 7. It shall be lawful for any officer of the army, navy, marines, customs, or excise, to stop, arrest, and detain every such person, and to convey him before a justice of the peace residing near; and such justice, upon proof on oath, by one or more credible witnesses, that such person was so taken or discovered, unless such person shall prove to the satisfaction of such justice, that he was only a passenger on board such ship or boat, shall hold such person to bail with two sufficient sureties in 100*l.* each, for his appearance to answer any indictment or information brought against him, and to pay such penalty, and abide any judgment for such offence; and in default of finding bail, or until the same be found, shall commit such person to any prison or house of correction to answer as aforesaid. (See stat 3 *G.* 4. *c.* 110. *post.*) Persons found on board or assisting may be taken before a justice.

§ 7. If any such person shall be capable and desirous of entering as a seaman or marine in any of H. M.'s ships of war, it shall be lawful for the officer by whom he was detained, or for the justice or magistrate before whom he may be carried, to cause him to be conveyed on board any of H. M.'s ships of war; and such person shall not be discharged for five years, and from thence until the conclusion of the war, unless disabled by accident or infirmity; and any officer of the navy or marines who shall discharge any person so entered, or suffer him to avoid actual service, shall on conviction be cashiered. If desirous of entering into the navy or marines, may be taken before officers instead of justices.

§ 7. No person so detained, and entering as a seaman, shall be liable to the penalty of treble value, or 100*l.* unless he shall desert.

By stat. 47 *G.* 3. *sess.* 2. *c.* 66. § 38. 39. The statement or averment, that the commissioners of customs or excise had made the option in the statute 45 *G.* 3. *c.* 121. § 7. in the information for the recovery of the penalty of treble value or 100*l.* shall be deemed sufficient evidence that they had made such option; and such penalty of 100*l.* may be sued for within one year after the offence. See also stats. 48 *G.* 3. *c.* 84. § 5. and 49 *G.* 3. *c.* 62. § 1—3. Option as to treble value or 100*l.*

By stat. 56 *G.* 3. *c.* 104. § 27. As doubts may arise whether any person arrested and detained under 45 *G.* 3. *c.* 121. or 47 *G.* 3. *sess.* 2. *c.* 66. and who under these acts are liable to be impressed into the naval service, may be liable to be kept and detained, by reason there may not be any person or officer employed in the 56 G. 3. c. 104 Persons detained under recited acts, liable to serve in the navy.

(*a*) Such forfeiture cannot be mitigated. See stat. 1 *G.* 4. *c.* 43. § 17. *post.*

impress service: it is enacted, that every person arrested or detained under the said acts, and who by these acts is liable to be impressed into the naval service, shall be liable to serve H. M. in the said service, and to be kept therein, in such manner, and for such time as in the said acts is mentioned; and every person and officer who by the said acts would have been authorised to receive and detain any such person shall be empowered so to do, in the same manner as if he had been authorised so to do by an impress warrant.

58 G. 3. c. 76. Foreigners found, or who have been on board vessels liable to forfeiture, assisting in conveying or concealing spirits.

By stat. 58 *G.* 3. *c.* 76. § 1. Every person not being a subject of H. M. who shall be found on board, or discovered to have been on board any ship or boat, within one league of any of the dominions of H. M., such ship or boat being liable to forfeiture under any act for being found, or having been at anchor, or hovering within any such distances of any of the dominions of H. M., with such goods on board as subject such ship, boat, or goods to forfeiture, and who shall not prove that he was only a passenger; and every person, not being a subject of H. M., found within one league of any of his dominions, assisting in unshipping to be laid on land, or carrying, conveying, concealing, or assisting in carrying, conveying, or concealing, any foreign brandy, rum, geneva, or spirits subject to forfeiture under any law relating to the customs or excise, shall forfeit treble the value of the goods found or taken from him, or 100*l.* at the option of the commissioners of customs or excise who shall direct the prosecution; such penalties to be recovered as by any law relating to the customs or excise, and one half to be applied to the person finding and detaining the offender, or informing for the same; and such person shall also be liable to such other punishment as may by any law be inflicted on him.

Penalty.

How to be recovered and applied.

Punishment.

Such persons may be arrested and taken before a justice, who may commit on conviction, if penalty be not paid.

§ 1. It shall be lawful for any officer of the army, navy, marines, customs, excise, or smuggling preventive boat service, to arrest and detain such person, not being a subject of H. M., and to convey him before a justice of peace residing near the port into which the ship or boat shall be taken, or near the place where he shall be arrested; and it shall be lawful for such justice, on confession of the offence charged in the information then exhibited by any officer of customs or excise, or on proof thereof, on the oath of one or more credible witnesses, to convict such person, who shall immediately pay to such officer the penalty in which he shall be convicted; and if he shall not, such justice shall, by warrant under his hand and seal, commit him to any gaol, or prison, or house of correction, until the penalty be paid; and the commissioners of customs or excise in *England, Scotland,* or *Ireland* respectively, shall award to the person detaining him 20*l.* for each man so convicted and committed.

Commissioners may reward persons detaining offenders.

45 G. 3. c. 121. Penalty on persons taking horses for conveying seized spirits, &c. without owner's consent, 50*l.* to 20*l.*

By stat. 45 *G.* 3. *c.* 121. § 9. If any person shall take any horse belonging to any other person without his consent, for carrying foreign brandy, rum, geneva, or spirits, tobacco, or snuff, subject to forfeiture under any act relating to the customs or excise; such person being thereof convicted before a justice of peace, on the oath of one or more credible witnesses, shall forfeit a sum not exceeding 50*l.* nor less than 20*l.* to be recovered under any act relating to the customs or excise, and one half shall go to the persons informing of the same, and the other to the person to whom such horse shall belong; but nothing herein shall

exempt such offender from any punishment he would have been liable to for taking such horse, in case such penalty had not been imposed by this act.

By stat. 3 *G.* 4. *c.* 110. intituled "*An Act to amend the Laws for the Prevention of Smuggling,*" § 1. So much of stat. 57 *G.* 3. *c.* 87. § 5. by which it is enacted, that it shall be lawful for any justice of the peace, before whom any person arrested as therein mentioned, being a subject of H. M. and not being fit to serve H. M. in his naval service, shall be carried, on the confession of any such person of ai y such offence as therein mentioned, with which he may be charged in any information or complaint, by any officer of customs or excise, or on proof thereof on the oath of one witness, to convict such person in such penalty as therein mentioned; and that every such person so convicted shall, immediately on such conviction, pay down into the hands of such officer the penalty in which he shall be convicted; and if not, the said justice shall, by warrant under his hand and seal, commit the person so convicted to any gaol or prison, or house of correction, until such penalty shall be paid; and that in all cases (*a*) where any person liable to be arrested under any of the acts made for the prevention of smuggling, shall be fit and able to serve H. M. in his naval service, and liable under the said acts, or any of them, to be impressed into such service, every such person so arrested shall be taken before such justice, and shall upon such proof as mentioned in stat. 45 *G.* 3. *c.* 121. or any other act, is required, be committed by such justice to prison, to answer such information and abide such judgment as may be thereon given against him in that behalf; and that it shall be lawful for the gaoler or keeper of any prison or house of correction in which such person shall be so imprisoned, or for any officer of customs or excise, on the order of the commissioners of customs or excise directing the prosecution, to such gaoler or keeper and officer, to convey, or cause to be carried or conveyed, any such person on board of any of H. M.'s ships of war, in order to his being impressed into H. M.'s naval service; and if such person shall, at any time or times after any such commitment, and before the expiration of five years from the time of his arrest, escape or desert from or leave such custody or service, he shall, over and beside all punishment to which he shall be subject for such desertion, be liable to be at any time or times afterwards again arrested and imprisoned, or delivered over as aforesaid, is repealed; and it is enacted that from and after the passing of this act, it shall and may be lawful in and throughout the U. K. of *G. B.* and *Ireland,* to and for any justice or justices of the peace before whom any person liable to be arrested, and arrested under any of the acts made for the prevention of smuggling, shall be carried, on the confession of such person of the offence or offences for which he shall be so detained, and with which he shall be charged in any information or complaint then and there exhibited or made by any officer of customs or excise, or any other officer or person employed for the prevention of smuggling, against him, or on proof thereof upon the oath of one or more credible witness or witnesses, to convict in the forms or to the effect specified in the schedule hereto annexed, such person of such offence

3 G. 4. c. 110.

So much of recited act as respects the punishment of persons convicted, either in paying penalties or in certain cases ordered to serve in the navy, repealed.

Justices before whom offenders against the acts for prevention

(*a*) 57 *G.* 3. *c.* 87. § 6.

3 G.4. c.110.

of smuggling shall be brought, shall, on conviction, order punishment by fine, imprisonment, or impressment, in the manner herein mentioned.

or offences; and every such person so convicted as aforesaid, who shall not be a seaman or seafaring man, or being such seaman or seafaring man shall not be fit and able to serve H. M. in his naval service, shall immediately, upon such conviction, pay into the hands of such officer the penalty of 100*l.* for every such offence of which he shall be so convicted as aforesaid; or in default thereof, the said justice or justices shall, and he and they is and are hereby respectively authorised and required, by warrant under his and their hand and seal, or hands and seals, to commit such person so convicted as aforesaid, and making such default as aforesaid, to any gaol, or prison, or house of correction, there to remain until every such penalty for every such offence of which he shall be so convicted shall be paid, such 100*l.* to be levied and applied as the penalty hereby repealed; and if the person so convicted as aforesaid shall be a seaman or seafaring man, and fit and able to serve H. M. in his naval service, and liable, under the said acts, or any of them, for the offence or offences of which he shall be so convicted as aforesaid, to be impressed into such service, and shall not prove that he is not a subject of H. M., it shall and may be lawful for any such officer or person as aforesaid, and he and they is and are hereby required, upon such conviction of such person as aforesaid, to carry or convey, or cause to be carried or conveyed, such person on board of any of H. M.'s ships, in order to his serving H. M. in his naval service; and if such person shall at any time or times after such conviction as aforesaid, and before the expiration of five years from the time of such conviction, by any means escape or desert from such custody or service respectively, so as not to complete the service of five years in H. M.'s navy, according to the true intent and meaning of this act, he shall, over and above all punishment to which he shall be subject for desertion, be liable to be at any time or times afterwards again arrested and delivered over as aforesaid: Provided always, that if it shall be made appear to any such justice or justices, that convenient arrangements cannot be at once made for carrying or conveying such seaman or seafaring man, so convicted as aforesaid, on board any of H. M.'s ships, in order to serve H. M., it shall and may be lawful for any such justice or justices, and he or they are hereby required to commit any such seaman or seafaring man so convicted as aforesaid, to any prison or gaol, there to remain in safe custody for any period not exceeding one month, in order that time may be given to make arrangements for so conveying such seamen or seafaring men on board any of H. M.'s ships as aforesaid: Provided always, that the commissioners of H. M.'s treasury, or any three or more of them, shall have full power and authority to remit or mitigate any such penalty, punishment, or service, whether the parties shall be seafaring men or otherwise; provided that no justice or justices shall accept or receive any bail for any person liable to be arrested, and arrested as aforesaid.

Treasury may mitigate punishment.

Justices not to accept bail.

Aldridge's case, *H.* 4 & 5 *G.*4. 2 *B.* & *C.* 600. In a conviction under stat. 3 *G.*4. *c.*110., it is necessary that the offence should appear to have been proved on the oath of one or more credible witnesses; and therefore, where the conviction stated "that *R. A.* was convicted of carrying brandy liable to seizure" (without saying *upon oath*), and proceeded, "and it is this day in like manner also proved on the oath of *J. H.* that the brandy was taken from *R. A.*, and that he was detained by an officer of the navy, &c."

Held, that carrying the brandy was the offence; and as that was not stated to have been proved on oath, the conviction was bad, and that *R. A.* (having been committed to prison) was entitled to be discharged. 3 G. 4. c. 110.

Schedule to which this Act refers.

Form of Conviction to be used in the Case of a Smuggler not a Seaman or Seafaring Man, or not fit to serve in the Navy.

County of ———, [*or as the case may be*] to wit. } *BE it remembered, that on the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ——— *at* ——— *in the county of* ——— A. B. [the name of the smuggler] *hath been duly convicted before me* [name of justice] *one* [or, *before us* ——— *and* ——— *two*] *of his majesty's justices of the peace, in and for the county of* ——— [or, *for the riding, division, city, liberty, town, or borough of* ——— as the case may be] *of* [here state the offence] *by him the said* A. B. *committed, against the provisions of the acts of parliament made and passed for the prevention of smuggling; which offence hath been duly proved before me* [or *us*] *on the oath of one or more credible witnesses; and I* [or *we*] *do therefore adjudge that the said* A. B. *hath, for such offence, forfeited the sum of* ——— *pursuant to the act passed in the third year of king* George *the Fourth* [here state the title of the present act]. *Given under my hand and seal* [or *our hands and seals*] *at* ——— *in the county of* ——— *the* ——— *day of* ——— *in the* ——— *year of the reign of his present majesty king* ——— *and in the year of our lord one thousand eight hundred and* ———.

Form of Conviction to be used in the Case of a Smuggler being a Seaman or Seafaring Man, and fit and able to serve in the Navy.

County of ———, [*or as the case may be*] to wit. } *BE it remembered, that on the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ——— A. B. [the name of the smuggler] *hath been duly convicted before me* ——— *one* [or, *before us* ——— *and* ——— *two*] *of his majesty's justices of the peace in and for the county of* ——— [or, *for the riding, division, city, liberty, town, or borough of* ——— as the case may be] *of* [here state the offence] *by him the said* A. B. *committed against the provisions of the acts of parliament made and passed for the prevention of smuggling; which offence hath been duly proved before me* [or *us*] *on the oath of one or more credible witnesses; and the said* A. B. *being a seafaring man, and fit and able to serve his majesty in his navy, I* [or *we*] *do hereby adjudge the said* A. B. *to serve in his majesty's naval service, pursuant to the act passed in the third year of king* George *the Fourth, intituled* [here state the title of this act]. *Given under my hand and seal* [or, *our hands and seals*] *at* ——— *in the county of* ——— *the* ——— *day of* ——— *in the* ——— *year of the reign of his present majesty king* ——— *and in the year of our Lord one thousand eight hundred and* ———.

Kiteand Lane's case.
A. and *B.*, found and arrested on board a boat laden with smuggled goods within the harbour of *F.*, which was within a local exclusive jurisdiction, were afterwards taken, with the boat, &c. to the port of *D.*, and convicted before two justices of the town and port of *D.*, pursuant to stats. 45 G.3. c.121. § 7., 57 G.3. c.87. § 5., and 3 G.4. c.110.: Held, that the conviction, which only stated that they had been found and taken on board a boat in the harbour of *F.*, was bad, for not showing that the justices of *D.* had jurisdiction over the offence.

Semble, that in this case only the justices of the local jurisdiction of *F.* had authority to convict; and that the 45 G.3. c.121. § 7. gives jurisdiction to those justices only who reside near to the *first* port or place into which any ship, &c. shall be carried, or where any person shall be arrested by virtue of that clause.

Kite and Lane's case, *M.* 3 *G.* 4. 1 *B.* & *C.* 101. A rule had been obtained to show cause why a writ of *habeas corpus* should not issue, directed to the commander of H. M.'s ship of war, *Gloucester*, commanding him to bring up the bodies of *Charles Kite* and *Edward Lane*, who were confined on board that ship. The affidavits disclosed these facts:—on the 3d of *October* last, a boat, with *Kite* and *Lane* on board, was seized, within the harbour of *Folkstone*, for a breach of the revenue laws. The men were taken on shore, at *Folkstone*, and confined there until the 5th of *October*, when they were again put on board the boat, and taken, together with it, to *Dover*. An information was laid against *K.* and *L.*, before two justices for that place, and separate convictions were drawn up, as follows:—"Be it remembered, that on the 5th day of *October*, 1822, *Charles Kite*, of the town of *Folkstone*, in *Kent*, fisherman, hath been duly convicted before us, two of H. M.'s justices of the peace *in and for the town and port of Dover*, in the said county, for having, on the 3d day of *October*, been found and taken on board a boat *in the harbour of Folkstone aforesaid*, laden, &c." (setting out the offence, evidence, and adjudication, according to the second form given by the 3 *G.* 4. *c.* 110.) In pursuance of that adjudication, *K.* and *L.* were afterwards taken on board the *Gloucester*. There was no custom-house at *Folkstone*, and smuggled goods seized there were generally taken to *Dover*; but the jurisdiction of the magistrates for the town and port of *Folkstone* extended to the place where this seizure was made, and they constantly took cognizance of offences against the revenue laws, when committed there. The justices of *Dover* had no jurisdiction within the town or harbour of *Folkstone*. *Jervis*, on showing cause, contended, that the magistrates of *Dover* had authority to convict in this case. *Bayley* J. Admitting the magistrates of *Dover* to have had the jurisdiction contended for, ought not the conviction on the face of it to have shown that jurisdiction? *Littledale*, *contra*, contended, that the magistrates of *Dover* had no jurisdiction over the offence in question, and cited *Talbot* v. *Hubble*, 2 *Stra.* 1154. But admitting that jurisdiction could be given to them, by the subsequent taking of the vessel to that place, the fact of its having been taken there should have appeared on the face of the conviction. Something should have been shown connecting the offence committed at *Folkstone* with the jurisdiction of magistrates appointed for the town and port of *Dover*. Nothing of that kind is stated; at all events, therefore, the conviction is bad. *Abbot* C. J. Two questions have been raised in this case:—1st, Whether the magistrates of the town and port of *Dover* had authority over the subject-matter of the conviction; and, 2dly, Whether the conviction is good, inasmuch as that authority is not apparent on the face of it. By the 45 *G.* 3. *c.* 121. § 7. it was enacted, that persons "taken on board of any ship, vessel, or boat, or on land, under the circumstances there stated, should be taken before one or more justice or justices residing near the port or place into which such ship, vessel, or boat, should be taken or carried, or near to the place where any such person should be so taken or arrested; and that such justice or justices might hold the party accused to bail, or, if he desired it, send him on board one of H. M.'s ships of war." By stat. 57 *G.* 3. *c.* 87. § 5., after reciting the former enactment, it is provided, that any *such* justice or justices shall

have power to hear and decide upon any such complaint immediately, instead of holding the party to bail. Jurisdiction is, therefore, given to the same magistrates by both these acts. Now, it appears by the affidavits in this case, that the persons offending were arrested within the harbour of *Folkstone;* their vessel was detained there, and they were taken on shore within the local jurisdiction of the magistrates of that place. On a subsequent day, the prisoners were again put on board the vessel, and carried, together with it, to *Dover.* That raises the question, whether persons carried, by the voluntary act of the captors, within a particular jurisdiction, can afterwards, without any apparent necessity, be taken within the limits of another jurisdiction, and be there convicted of the offence imputed to them. If that can be done, this great inconvenience will result, that persons arrested under the provisions of the acts in question may be carried from port to port, at the pleasure of the captors, and may at last be convicted at one extremity of the kingdom of an offence committed at the other. I am strongly inclined to think that no such power exists. It is, however, unnecessary to decide expressly upon that point; for I am clearly of opinion, that the conviction itself is bad on the face of it. It is a first principle, as to all acts done by magistrates, that their jurisdiction should appear upon the face of their proceedings. *In convictions, the place for which the magistrates act must be shown; the offence must be set out;* and either it must appear that the offence was committed within the limits for which the convicting magistrates are appointed, or facts must be stated which give them jurisdiction beyond those limits. If we hold that to be unnecessary in the present case, we shall give to the statutes which have been cited the effect of repealing the former law upon this subject. Now it does not appear to have been the intention of the legislature to extend the jurisdiction of magistrates; and unless we come to that conclusion, we cannot suppose it to have been intended that a magistrate of one place should have jurisdiction over an offence committed in another. I am, therefore, satisfied, that this conviction is bad, (notwithstanding the form given by the 3 *G.* 4. *c.* 110.) nothing being stated on the face of it which shows that the magistrates of *Dover* had authority over the subject-matter of the conviction. The rule must, therefore, be made absolute.—*Bayley* and *Holroyd* Js. concurred.—*Best* J. I agree with my Ld. Ch. J., that these prisoners must, for the reasons that his lordship has given, be discharged. I am also of opinion, that the magistrates of *Dover* had no jurisdiction in this case. The offence was committed, and the vessel on board of which the prisoners were found was captured, within the harbour of *Folkstone.* At *Folkstone* the prisoners were landed, and confined two days, and were afterwards put on board ship again and carried to *Dover.* The words of the statute which creates this offence, and gives the magistrates jurisdiction over it, require that prisoners shall be conveyed before some *justice or justices residing in or near the port or place into which the ship shall be taken or carried.* I think the import of these words is, *that* port or place into which the ship shall be *first* carried in which a magistrate can be found to decide on the cases of the men that are taken on board of her. The words "port or place" cannot mean any port to which the ship shall at any time be car-

ried, and must therefore be confined to the first port into which she shall be brought where the thing can be done which is required to be done. If we put any larger constructions on the words of the act, we give occasion for delay, which must be prejudicial to the prisoner. There were magistrates in *Folkstone*, before whom the prisoners might have been taken; they ought not therefore to have been taken before any other tribunal. Perhaps the case would be different if the ship came within the limits of a port, but went away again, either from stress of weather or other necessary cause, without communicating with the land. It is a settled principle, that penal statutes, and such as create a new jurisdiction, shall receive a strict construction. We have been told that there is no custom-house at *Folkstone*, and that therefore it would be inconvenient to land the goods found on board vessels seized for smuggling. If any inconvenience shall arise from this construction, that may be guarded against by another law. We must put that interpretation on the present law which the rules of construction require; and that is, such as will guard against the abuse of a new and extraordinary power. Rule absolute. (*a*)

See stat. 47 *G.* 3. *sess.* 2. *c.* 66. § 8, 9, 10. and 17.

57 G. 3. c. 33. Vessels (not being square-rigged) coming from any place between *Brest* and the *Helder*, &c. having on board for the use of the seamen more than the quantity herein specified of spirits, tea, or tobacco, such goods and vessels shall be forfeited.

By stat. 57 *G.* 3. *c.* 33. § 1. " If any ship or vessel (not being square-rigged) coming from any place between *Brest* on the coast of *France* and the *Helder Point* on the coast of *Holland*, including the *Texel Isle* and all places on the *Zuyder Zee*, and all the islands on the coast of *France*, the *Netherlands*, and *Holland*, between *Brest* and the *Texel*, shall arrive in any of the ports of that part of the U. K. called *G. B.*, or shall be found at anchor or hovering within the limits of any of the ports thereof, or within four leagues of that part of the coast thereof which is between the *North Foreland* on the coast of *Kent* and *Beachy Head* on the coast of *Sussex*, or within eight leagues of any other part of the coast of that part of the U. K. called *G. B.*, or shall have been discovered to have been within the said limits or distances, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which necessity and

(*a*) Summary convictions before magistrates being by virtue of a circumscribed and extraordinary jurisdiction, nothing can be intended to aid or extend that jurisdiction. Hence it has been always held necessary that the authority of the convicting magistrates should appear upon the face of their proceedings. *Rex* v. *Green*, *Cald.* 391. Upon this ground, in *Rex* v. *Jonson*, 1 *Str.* 261., the conviction was quashed, because it did not appear that it was made by justices of the county where the offence was committed; and in *Rex* v. *Curden*, 4 *Burr.* 2279., *Rex* v. *Jeffries*, 1 *T. R.* 241., *Rex* v. *Stone*, 1 *East*, 636., and *Rex* v *Jarvis*, *ib.* 644. n., it was laid down as a general rule, that a conviction must show that the justices had jurisdiction. In *Rex* v. *Hazell*, 13 *East*, 139., which was a conviction of a person employed in a manufacture, for refusing to work, the justices had followed the form prescribed by the 41 *G.* 3. *c.* 38. That form, which was very similar to those given by the 3 *G.* 4. *c.* 110., required that the offence should be set out, but did not expressly require that the place where it was committed should be shown. The conviction described the offence minutely, but did not state where it was committed. Per Ld. *Ellenborough* C. J., " It must appear upon the face of the conviction that the offence was committed within the county of the justices who convict the defendant, without which they can have no jurisdiction. The statute never meant to give those magistrates jurisdiction to inquire of this offence throughout every county; the allegation, therefore, that the offence was committed at some place *within* the county of which they were justices, is essential to give them jurisdiction." See also *Rex* v. *Edwards*, 1 *East*, 278.

distress the master or other person having or taking the charge or command of such ship or vessel shall give notice and make proof before the collector or other chief officer of the customs of any port within the limits of which such ship or vessel shall be found, immediately after the arrival of such ship or vessel within the limits of such port, having on board, for the use of the seamen then belonging to and on board such ship or vessel any brandy or other spirituous liquors exceeding one half of a gallon for each seaman, or having on board any tea exceeding two pounds weight in the whole, or having on board any tobacco, except loose tobacco not exceeding one pound weight for each seaman; then not only all such goods, but also the ship or vessel on board which they shall be found as aforesaid, with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited, and shall and may be seized by any officer or officers of H. M.'s army, navy, or marines, or of the customs or excise." 57 G. 3. c. 33.

Such vessels coming from any place between *Brest* and *Cape Finisterre*, &c. having on board a larger quantity of spirits, &c. than herein mentioned, goods and vessels shall be forfeited in like manner.

§ 2. "If any ship or vessel (not being square-rigged) coming from any place between *Brest* on the coast of *France* and *Cape Finisterre* on the coast of *Spain*, including all islands on the coasts of *France* and *Spain* between those places, or coming from any place between the *Helder Point* on the coast of *Holland* and *North Bergen* on the coast of *Norway*, or from any place as far up the *Cattegat* as *Gottenburgh*, including all islands on the coasts between those places, shall arrive in any of the ports of that part of the U. K. called *G. B.*, or shall be found at anchor or hovering, or shall have been discovered to have been within the said limits or distances, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which necessity and distress the master or other person having or taking the charge or command of such ship or vessel shall give notice and make proof before the collector or other chief officer of the customs of any port within the limits of which such ship or vessel shall be found, immediately after the arrival of such ship or vessel within the limits of such port, having on board, for the use of the seamen then belonging to and on board such ship or vessel, any brandy or other spirituous liquors exceeding one gallon for each seaman, or having on board any tea exceeding four pounds weight in the whole, or having on board any tobacco, excepting loose tobacco not exceeding two pounds weight for each seaman; then not only all such goods, but also the ship or vessel on board which they shall be found, with all her guns, shall be forfeited, and may be seized by any officer of the army, navy, or marines, or of customs or excise."

Forfeitures how to be recovered.

§ 3. All forfeitures imposed by this act shall be sued for, levied, and recovered by such ways, means, or methods, as any forfeiture is or may be recovered by any law or laws of customs or excise, or by action of debt, bill, plaint, or information in any of H. M.'s courts of record at *Westminster*, or in the court of exchequer in *Scotland*.

59 G. 3. c. 121. Provisions of 57 G. 3. c. 33. shall extend to vessels coming from the port of *Brest* having on

And by stat. 59 *G.* 3. *c.* 121. § 6. all the provisions and forfeitures of stat. 57 *G.* 3. *c.* 33. shall extend to all ships or vessels (not being square-rigged) coming from the said port of *Brest*, which shall arrive in any of the ports of that part of the U. K. called *G. B.*, or be found at anchor or hovering within the limits or distances therein mentioned, having on board for the use of the

board spirits, &c. exceeding a certain quantity.

seamen then belonging to and on board such ship or vessel, any brandy or other spirituous liquors exceeding one gallon for each seaman, or having on board any tea exceeding four pounds weight in the whole, or having on board any tobacco (excepting loose tobacco, not exceeding two pounds weight for each seaman), as fully as if all the clauses, powers, authorities, forfeitures, &c. in the said act were repeated and re-enacted in this act.

59 G. 3. c. 121. Foreign smuggling vessels, in which there shall be one or more subjects of H. M., found within certain leagues of the coast, having on board spirits in casks of less content than 60 gallons; or tea, or tobacco, exceeding a certain quantity, shall be forfeited with the cargo; and such persons shall be prosecuted.

By stat. 59 *G.* 3. *c.* 121. § 1. "If any foreign smuggling vessel or boat, in which there shall be one or more subjects of H. M., whether mariners or persons pretending to be passengers, shall be found or discovered to have been within four leagues of that part of the coast of *G. B.* which is between the *North Foreland* on the coast of *Kent*, and *Beachy Head* on the coast of *Sussex*, or within eight leagues of any other part of the coast of *G. B.* or *Ireland*, having on board any foreign brandy, rum, geneva, or other spirits, in any cask or package of less size or content than sixty gallons (except only for the use of the seamen belonging to and on board such vessel or boat, not exceeding two gallons for each seaman); or any tea exceeding six pounds in the whole; or any tobacco or snuff, in any cask or package whatever containing less than four hundred and fifty pounds weight, except loose tobacco for the use of the seamen on board such vessel or boat, not exceeding five pounds weight of tobacco for each seaman, and except such tea or manufactured tobacco or snuff as shall have been duly shipped for exportation as merchandise on board such vessel or boat from some port or place in *Ireland;* such vessel or boat, together with all the goods laden therein, shall be forfeited, and shall and may be seized, prosecuted, and dealt with as by the laws now in force for the prevention of smuggling; and every such subject of H. M., who shall be found on board such vessel or boat, shall be liable to all the pains and penalties, and shall and may be detained, prosecuted, convicted, or delivered over to H. M.'s navy, in like manner as persons being subjects of H. M., and found on board vessels or boats liable to forfeiture, belonging wholly or in part to H. M.'s subjects, or whereof one half of the persons on board are subjects of H. M., may, by any law or laws now in force, be detained, prosecuted, convicted, or delivered over to H. M.'s navy; and the officer or officers detaining such person shall be allowed the like reward, and part or share of any penalty that may be recovered from any such person, as is now by law allowed and paid for the detention of persons in similar cases."

How the leagues shall be measured.

§ 2. Such distances of eight leagues shall be measured in any direction between the southward and eastward of *Beachy Head*, and the provisions of this act shall extend to such limits and distance of eight leagues in every direction from *Beachy Head*, although any part of such limits so extended may exceed the distance of four leagues before mentioned from any part of the coast of *G. B.* to the eastward of *Beachy Head*.

The court of K. B. will not take judicial notice of the local situation of different places in counties.

Although the Court of K. B. will take judicial notice of the general division of the kingdom into counties, because they are continually in the habit of directing their process to the sheriffs of those counties, and because they are mentioned in a great variety of acts of parliament, they will not take judicial notice of the local situation and distances of the different places in the counties of *England* from each other; and, therefore, where a return to a

writ of *Habeas Corpus* stated that the prisoner was found on board a vessel, discovered within eight leagues of that part of the coast of *G. B.* called *Suffolk*, to wit, within eight leagues of *Orfordness* in that county, it was held not to be averred with sufficient certainty, that the vessel was not within four leagues of the coast of *G. B.* between the *North Foreland* in *Kent*, and *Beachy Head* in *Sussex*. *Deybel's case*, *H.* 1 & 2 *G.*4. 4 *B. & A.* 243.

And where the return to a *habeas corpus*, after stating that the prisoner was found on board a smuggling vessel liable to forfeiture, and that he was a seaman, &c. proceeded to state, that he, being such subject and seafaring man as aforesaid, and not being only a passenger on board the vessel at the time she became liable to forfeiture, was afterwards, to wit, on, &c. carried before *George Dell*, Esq. mayor of *Dover*, a justice, &c. residing near *Dover*, the port into which the vessel had been carried, and *upon due proof*, as by the statute in that case made and provided is required, was committed to answer such information and abide such judgment as might be given. It then proceeded to set forth an impressment and detainer. Objection that this return was insufficient. After argument, *Abbott* C. J. said, This act of parliament of the 57 *G.* 3. *c.* 87. (*a*) is one highly beneficial in preventing frauds upon the revenue; but at the same time, inasmuch as it trenches very strongly on the liberty of the subject, we must take care that its provisions are strictly pursued. This averment is one of a conclusion of law; it states that *upon due proof* the party was committed. Now whether that was so, this return does not enable us to judge; for unless we know what the proof was which was given, it is impossible for us to tell whether it was the proof required by the act of parliament. The circumstances stated in the introductory part of this return, seem to me to be quite sufficient to warrant this commitment; and if it had been stated, that upon due proof of the matters before mentioned, the prisoner was committed, I should have thought it sufficient. In the present case, however, the prisoner must be discharged. *Holroyd* J. The power of the magistrate to commit depends on the proof before him; and the rule is, that *where a limited authority is given, it must be shown to have been strictly pursued.* Here it is only stated, that on due proof the justice committed: but he may suppose that to be due proof which is not the proof required by the statute. He ought, therefore, to state what it was, and then the Court will be enabled to form a judgment whether he has judged right. The prisoner was discharged. *Nash's case*, *H.* 1 & 2 *G.*4. 4 *B. & A.* 295.

In a return to a *habeas corpus*, it is not sufficient to state that the party was committed *upon due proof*, without stating what proof.

(*a*) See stat. 3 *G.*4. *c.* 110. § 1.

And by stat. 59 *G.* 3. *c.* 121. § 3. When any person so committed as aforesaid and taken on board a ship of war shall be found not fit or able to serve H. M. in his naval service, and shall be refused by any proper naval officer to be received into such naval service, every such person shall forfeit 100*l.*; and the gaoler, keeper, or other officer, who so carried and conveyed the said person on board the said ship of war, shall re-convey the said person before the said justice or justices of the peace who had previously, on proof as required by law, committed the said person to prison; and the said justice or justices is and are hereby authorised and required to convict the said person in the said penalty of 100*l.*;

59 G. 3. c. 121. Persons arrested under this or former acts, and found not fit for the navy, shall forfeit 100*l.*, and if not paid shall be imprisoned.

59 G.3. c.121. and every such person so convicted shall immediately on such conviction pay down into the hands of the said officer who detained the said person, or into the hands of the justice or justices, to be applied according to law, the said penalty in which he shall be so convicted; and if any such person so convicted shall not forthwith pay down the said penalty, the said justice or justices shall and he and they is and are hereby respectively authorised and required, by warrant under his or their hand and seal, to commit the person so convicted as aforesaid to any gaol, or prison, or house of correction, until such penalty shall be paid.

59 G 3. c.121. Persons found or having been on board of vessels liable to forfeiture, wearing vizards or masks shall, on conviction, be transported.

By stat. 59 *G*. 3. *c*.121. § 4. "If any person or persons, being H. M.'s subject or subjects, shall be found or taken on board, or discovered to have been on board any ship, vessel, or boat liable to forfeiture under any of the provisions of any act or acts of parliament, for being found or having been at anchor or hovering within any such distances of any of the dominions of H. M., with such goods on board as subject such ship, vessel, or boat, or goods, to forfeiture, wearing any vizard, mask, or other disguise, such person or persons shall be adjudged guilty of felony, and shall on conviction for such his, her, or their offence, be transported as a felon for the space of seven years; and if any such offender shall return into *G. B.* or *Ireland* before the expiration of the said seven years, he, she, or they so returning shall suffer as a felon, and have execution awarded against him, her, or them, as persons attainted of felony without benefit of clergy."

24 G.3. c.47. Of the built of vessels.

By stat. 24 *G*. 3. *sess*. 2. *c*. 47. § 4. All vessels, belonging in whole or in part to any of H. M.'s subjects, called *cutters*, *luggers*, *shallops*, or *wherries* (of what built soever), or of any other description, whose bottoms are clench-work, unless they shall be square-rigged, or fitted as sloops, with standing bowsprits; and all vessels the length of which shall be greater than in the proportion of 3½ feet to one foot in breadth, [except vessels employed in the pilchard fishery duly licensed, 25 *G*.3. *c*.58. § 4.]; and all ships belonging as aforesaid armed for resistance, [and by 27 *G*. 3. *c*.32. § 1. *cutters*, *luggers*, *shallops*, *wherries*, *sloops*, *smacks*, or *yawls*, having a bowsprit which shall exceed in length more than two-thirds of the length of such cutter, &c. from the forepart of her stem, to the aft side of the stern-post aloft, whether the same shall be a standing or running bowsprit,] which shall be found within the limits or distance before described shall be forfeited, together with the goods, if any laden thereon, [this only applies to the 24 *G*. 3.] and all her guns, tackle, and furniture.

Ante, p. 12.

§ I. (*i*) Certain Ships not to be used unless licensed.

34 G.3. c.50. By stat. 34 *G*.3. *c*.50. § 6. So much of § 5. of 24 *G*.3. *sess*. 2. *c*.47. as extends to permit any cutter, lugger, shallop, wherry, smack, yawl, or boat hereinafter mentioned, to have arms on board, shall be repealed.

§ 7. Every cutter, lugger, shallop, wherry, smack, or yawl, belonging in whole or in part to any of H. M.'s subjects, of which the bottom is clench-work, unless such cutter, &c. shall be square-rigged, or fitted with a standing bowsprit, the heel of which shall

be fixed to the main deck by an iron clasp without bitts, securely bolted through the bowsprit and beam of the said deck, and the bowsprit to be steaved or elevated at least two inches in every foot from the straight line of the range of the deck, and rigged with a fixed stay for the jibb to work upon, which stay shall be not less than a two-inch rope for a vessel of twenty tons, and shall increase in size half an inch for every other ten tons, and the bowsprit to be without any traveller or materials to conduct the jibb out and in upon it, and without any flying jibb set thereon, which shall be found, or discovered to have been within the limits of any port of this kingdom, or within four leagues from the coast, or within the distance herein specified, (100 leagues by 47 *G.* 3. *sess.* 2. *c.* 66. § 3. 17.), shall be forfeited, with the goods laden thereon, and her guns, tackle, and furniture. 34 G.3. c.50.

By stat. 35 *G.* 3. *c.* 31. § 1. The provisions of 34 *G.* 3. *c.* 50. shall extend to every cutter, lugger, shallop, wherry, smack, or yawl, belonging in whole or in part to H. M.'s subjects, of any built whatsoever the same may be. 35 G.3. c.31.

By stat. 34 *G.* 3. *c.* 50. § 9. And in case any open boat which shall be built for rowing or sailing, or rowing and sailing, belonging in whole or in part to any of H. M.'s subjects, and being of the length of 14 and under 18 feet, and the depth of which is greater than in the proportion of 1¼ inches to every foot in length, shall be found within the distance aforesaid, or upon land, the same shall be forfeited, and may be seized by any officer of excise or customs; unless such boat shall have plank of three-fourths of an inch thick, and her timbers 1½ inches square, and not more than nine inches distant from timber to timber; and if any such boat by this act declared to be forfeited shall be found on board, or shall belong to any cutter, lugger, shallop, wherry, smack, or yawl, such cutter, &c. shall also be forfeited, and may be seized by any officer of excise or customs. 34 G.3. c.50. Of the built of boats.

§ 10. But nothing in this act shall extend to *whale boats* belonging to any vessel employed in the whale fisheries, and after the return of such vessel, laid up out of use.

By 28 *G.* 3. *c.* 34. § 10. If any open boat, belonging in whole or in part to any of H. M.'s subjects, and being of the length of 23 feet and upwards, built and constructed for rowing or sailing, or rowing and sailing, the length whereof is greater than in proportion of 3½ feet to one foot in breadth, be found within four leagues of the land [100 leagues by 47 *G.* 3. *sess.* 2. *c.* 66. § 17.] or upon land in *G. B.*; or being of the length of 18 feet and under 24 feet, and the depth of which shall be greater than in the proportion of 1½ inches to every foot in length, it shall be forfeited, and may be seized by any officer of excise or customs, together with the ship or vessel to which such boat belongs. 28 G.3. c.34. 47 G.3. sess.2. c.66.

§ 11. And all open boats belonging as aforesaid of 24 feet and upwards, the depth of which shall be greater than in the proportion of one inch to one foot in length, may be seized as aforesaid. 28 G.3. c.34.

§ 12. But nothing herein shall extend to boats belonging to or employed in the service of the navy, victualling, ordnance, customs, excise, or post-office, or used on any canal or inland navigation; or boats duly licensed, the licence being actually on board at the time of detention; or boats built of timber and planks of certain dimensions, particularly set forth in the act.

1 G.4. c.43. Boats belonging to square-rigged vessels exempt from seizure on account of their dimensions and construction.

By stat. 1 *G.4. c.* 43. § 3. After reciting that whereas by the laws now in force, boats of certain dimensions and constructions are liable to seizure, unless licensed by the commissioners of H. M.'s customs, and security given according to law that such boats shall not be used or employed in any way or any manner whatever contrary to the laws in force or thereafter to be made relative to the revenue of customs: and whereas it is expedient to exempt boats belonging to square-rigged ships or vessels from such liability to seizure; it is therefore enacted, that nothing in the said law shall extend to require any licence or bond, or to forfeit any boat for want thereof, which shall belong to any square-rigged ship or vessel, on account of the dimensions or construction of such boat, provided such boat is with the ship or vessel, or employed on the duty or service of the ship or vessel to which it may belong.

For regulations respecting the manner of licensing boats by the commissioners of customs, and delivering up of licences in cases of loss or capture of vessels licensed, vide statutes 52 *G.3. c.* 141., 56 *G.3. c.* 104. § 19—24., and 59 *G.3. c.* 121. § 12, &c.

34 G.3. c.50. Arms and ammunition of such vessels.

And by 34 *G.3. c.* 50. § 11. If any *cutter*, *lugger*, *shallop*, *wherry*, *smack*, *yawl*, or *boat*, belonging as aforesaid, shall be found to have been within the distance by this act specified as aforesaid, which shall have on board any arms or ammunition, except duly licensed, the same shall be forfeited, together with the goods, if any, and the guns, tackle, and furniture, which may be seized by any officer of excise or customs.

Provided, that nothing herein shall extend to any vessel on a voyage from *America*, or the *East* or *West Indies*, *Africa*, or the *Mediterranean*, so as to subject the same to forfeiture for having spirits, tea, coffee, tobacco, or snuff on board; nor to vessels employed in H. M.'s service; or used solely on rivers, canals, or inland navigation; or duly licensed as directed by the said act of 24 *G.* 3., and having such licence actually on board at the time of detention; nor to vessels having arms or ammunition on board regularly entered and cleared, and regularly stowed; nor to vessels wholly and solely employed in the fisheries, having sufficient hooks or nets on board proper for carrying on the same. *Id.*

§ 12. All seizures and forfeitures by this act are to be recovered and applied as is directed by the said act of 24 *G.* 3. *c.* 47.

§ I. (*k*) Penalty on Masters of Ships having more than a certain Quantity of Tea or Spirits on board.

19 G.3. c.69. Penalty on the master, mate, or seamen.

By 19 *G.* 3. *c.* 69. § 7. Where the officers of customs or excise shall find on board any ship or vessel coming from foreign parts within the limits of any port of this kingdom, more than 100lbs. of tea (not being an East India company's ship), or more than 100 gallons of foreign brandy or other foreign spirituous liquors (over and above two gallons for every seaman), and being in casks under 60 gallons, the master, or other person taking charge of the ship, shall forfeit 300*l.* And the said officers or their assistants may arrest such master or other person, and carry him before a justice residing near, who shall before such justice enter into a recognisance of 300*l.* [with one sufficient surety, 26 *G.* 3. *c.* 77. § 9.] to appear in the court of exchequer within the first four days

of the term next the arrest, to any information which may be exhibited against him; and the justice shall transmit the recognisance to the king's remembrancer in the said court. And if such person shall refuse to enter into such recognisance, the justice shall commit him to the next county gaol till he shall enter into such recognisance. 19 G.3. c.69.

By the 21 *G.* 3. *c.* 39. § 1. If the master shall conceal or suffer to be concealed by his mate or seamen any quantity of foreign spirituous liquors above two gallons for each seaman, or tea above six pounds, or coffee above nineteen pounds; or clandestinely import, or suffer to be imported, any such foreign spirituous liquors, or any other uncustomed goods whatsoever, whereby the owner of the vessel becomes liable to any penalties, or the vessel is liable to be forfeited; the master shall not only forfeit to the owner all his wages, but also treble value of such spirituous liquors, tea, coffee, or other uncustomed goods, over and above the penalties to which the master shall be liable by any law at the time of this act in force; to be recovered of such master by the owner, to his own use. 21 G.3. c.39. Masters concealing or importing clandestinely spirituous liquors.

§ 2. If the mates or seamen serving on board any vessel shall conceal on board thereof, or shall import any foreign spirituous liquors, above the allowance of two gallons for each seaman, or any tea above 6lbs., or any coffee above 19lbs. they shall forfeit to the owner all their wages, and also 10*s.* for every gallon of foreign spirituous liquors, and the like sum for every pound of tea and coffee so concealed or imported. Mates or seamen.

§ 3. If such mates or seamen shall commit such offences in time of war, the owner may send them on board some of H. M.'s ships of war, to serve for three years, except such as are unfit for service.

§ 4. This act shall be printed, and put up in some conspicuous part of every *British* vessel trading to any port of this kingdom; and where damaged or defaced, the master shall cause the same to be replaced, under the penalty of 10*s.* for every day during such omission, to be recovered by, and to be paid to the owner of the vessel by warrant from a justice of peace.

§ 5. If such mates or seamen so disabled from serving in time of war, or any other mates or seamen, shall be found offending against this act in time of peace, and shall refuse to pay the penalties, or shall not have effects to answer the same, any justice of peace (at the instance of the owner of the vessel) may commit them to the county gaol for three months, and not less than six weeks.

§ 6. The justice may mitigate penalties, but not below one half. *Vide post*, Mitigation of Penalties, &c.

§ 7. No order made by such justice shall be removed by *certiorari.*

N. B. No power is given to levy the penalty by distress.

§ I. (*l*) Persons lurking near the Coasts to assist in running Goods, &c.

By stat. 9 *G.* 2. *c.* 35. § 18. Upon information before a justice of the peace that any person is lurking, waiting, or loitering within five miles from the sea-coast, or from any navigable river, and 9 G.2. c.35. Persons lurking within five

miles of the coast.

that there is reason to suspect that he waits with intent to be assisting in the running, landing, or carrying off prohibited or uncustomed goods, it shall be lawful for such justice to grant a warrant for apprehending him and bringing him before any justice of such county, city, or liberty; and if he shall not give a satisfactory account of himself and his employment, or otherwise make it appear to the satisfaction of such justice, that he is not to be concerned in, or assisting in the carrying on any clandestine trade or unlawful business, he shall be committed to the house of correction, to be whipt and kept to hard labour for any time not exceeding one month; and the commissioners of customs or exciso shall cause 20*s.* to be paid to the informer for every such person.

§ 19. If such person shall desire time to clear himself, he shall not be punished by whipping, or other correction, but the justice may commit him to the common gaol, until he give a satisfactory account of himself, or find security, to the approbation of such justice, not to be guilty of the said offences.

19 G.3. c.69.

By stat. 19 *G.* 3. *c.* 69. § 8. It shall be lawful for the officers of customs or excise, and the persons acting in their aid, to arrest, stop, and detain all persons found aiding in unshipping, to be laid on land, any tea, foreign brandy, or other spirits, or any goods whatsoever, (customs and other duties not being first paid or secured,) or which are or may be prohibited to be imported into this kingdom, and convey them before a justice of peace residing near the place, who, if he sees cause, shall commit them to the next county gaol, there to remain without bail or mainprize till the next quarter sessions, to be tried as by this act is directed. See also stats. 45 *G.* 3. *c.* 121. and 48 *G.* 3. *c.* 84.

§ I. (*m*) Buying or receiving run Goods.

8 G.1. c.18. Buying or receiving run goods.

By stat 8 *G.* 1. *c.* 18. § 10., made perpetual by 49 *G.* 3. *c.* 20. § 4.) If any person shall knowingly receive or buy any run goods, before they shall have been legally condemned, he shall on conviction (after summons) by confession, or oath of one witness, before one justice where the offence shall be committed or the offender shall be found, forfeit 20*l.*; half to the informer and half to the poor; to be levied by distress; for want of distress, to be committed to prison for three months.

11 G.1. c.30. Concealing run goods.

And by stat. 11 *G.* 1. *c.* 30. § 16, 17. If any person shall knowingly harbour, keep, or conceal, or suffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay customs or excise, he shall (whether he claim any property in them or not) forfeit the same, and treble value. The price to be estimated at the rate the best goods of the kind shall at such time bear in London.

Offering to sale run goods.

§ 18. If any person shall offer to sale any prohibited goods, or which have been or are by him pretended to have been run, the same, together with the package, shall be forfeited, and be seized by the party to whom they are offered to sale, or by any officer of the customs or excise. Provided that if the seizure be within the bills of mortality, then within 24 hours, if elsewhere within 48 hours, after seizure, they be put into the king's warehouse near the place of seizure; and if it be far from any such warehouse, then in some excise office near.

§ 19. And the person offering or exposing them to sale shall also forfeit treble value: [or 100*l.* by stat. 57 *G.* 3. *c.* 87.] to be estimated at the price of the best goods of the like kind in *London*. And vide post, *stat.* 57 *G.* 3. *c.* 87. § 8. 11 G. 1. c. 30.

§ 20. And the said goods, if sold, may be seized (with the package) from the buyer, either by the seller or any such officer.

§ 21. The buyer shall also forfeit treble value [or 100*l.* by stat. 57 *G.* 3. *c.* 87.] to be estimated as aforesaid. But both buyer and seller shall not be prosecuted for the same goods, but whichever of them shall be first prosecuted by the other, the other shall be discharged; but if prosecution shall not be commenced in a month, the warehouse-keeper may prosecute.

§ 39. Which said forfeitures shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king and half to him that shall sue.

9 G. 2. c. 35. Porter carrying run goods.

By stat. 9 *G.* 2. *c.* 35. § 21. All watermen, carmen, porters, and all other persons whatsoever employed in carrying goods prohibited, run, or imported, without payment of the duties of customs or excise, upon whom, or in whose custody the same shall be found or seized, knowing the same to be prohibited, run, or clandestinely imported, and who shall be thereof convicted (A. B. C.) upon appearance or default, upon the oath of a credible witness, or by confession, before a justice of peace for the county, division, or liberty, where the offence shall be committed, or the offender found, shall forfeit treble the value of such goods; one moiety to the informer, and the other to the poor of the parish; to be levied by warrant (D) under the hand and seal of such justice upon the offender's goods, and for want of sufficient distress, the offender shall be committed (E) to the house of correction, there to be whipt and kept to hard labour for any time not exceeding three months.

§ I. (*n*) Assaulting or obstructing Officers.

13 & 14 C. 2. c. 11. Dangerously hurting an officer, finable.

By stat. 13 & 14 *C.* 2. *c.* 11. § 6. Where any officer or officers of the customs shall be, by any person armed with a club or any manner of weapon, forcibly hindered, affronted, abused, beaten, or wounded, to the hazard of their lives, either on board any ship, or on the land or water, in due execution of their office, every person so abusing any such officer or his deputy, or such as shall act in his aid or assistance, shall by the next justice or other magistrates be committed to prison to the next quarter sessions; and the said sessions shall punish him by fine, not exceeding 100*l.* and the offender shall remain in prison till discharged by order of the exchequer, both of the fine and of the imprisonment, or discover the person that set him on work.

6 G. 1. c. 21. By eight or more, transportation.

And by stat. 6 *G.* 1. *c.* 21. § 34, 35. If any officer of the customs be forcibly hindered, wounded, or beaten in the due execution of his office by any persons armed with any manner of weapon, tumultuously assembled by day or night, to the number of eight or more, the offenders and those aiding therein shall be transported for any term not exceeding seven years.

§ 36. But if any offender shall in two months after his offence, and before conviction, discover two or more of his accomplices, so Reward.

6 G. 1. c. 21. as two at least be convicted, he shall have 40*l.* reward for each convicted, and be acquitted of his own offence.

§ 37. And if any other person shall in three months discover any offender or offenders so as to be convicted, he shall have 40*l.* for each convicted, over and above any other reward on account of the run goods.

§ 38. The same to be paid by the receiver-general, or cashier of the customs, on producing the judge's certificate.

8 G. 1. c. 18. Persons armed or disguised, and being 5 in number, and within 20 miles of the coast, resisting the officers.

By stat. 8 *G.* 1. *c.* 18. § 6. (*vide ante.*) Persons passing with foreign goods landed without entry, within 20 miles of the coast, if they be more than five in number, or armed or disguised, or who shall forcibly resist the officers of the customs or excise in seizing run goods, shall be deemed runners of foreign goods within this act; and on conviction, guilty of felony, and transported for seven years.

Offender discovering.

§ 7. But if any such runner shall in two months after his offence, and before conviction, discover his accomplices, so as two or more be convicted, he shall have a reward of 40*l.* for every offender convicted if the value of the run goods exceed 50*l.*, and he shall be acquitted.

Other persons discovering.

§ 8. If any other person shall discover any one offender in three months, so as he be convicted, he shall have in like manner 40*l.* for every such offender, over and above what he may be entitled to on account of the said run goods, so as the value of the run goods exceeds 50*l.*

§ 9. The commissioners of customs and excise shall cause such rewards to be paid by the receiver-general or cashier of the customs or excise, out of any public money in their hands, in proportion to the duties payable on the goods so run, upon producing a certificate under the hand of the judge of the court where the offender shall have been tried, certifying his conviction.

9 G. 2. c. 35. Persons, to the number of three or more, assembled to be aiding and assisting in the clandestine running, &c. of goods, and armed, may be apprehended by the warrant of a justice; and upon conviction are to be adjudged guilty of felony, and transported for seven years.

Stat. 9 *G.* 2. *c.* 35. § 10. After reciting that dissolute persons frequently appeared in great gangs near the sea coasts and shores of navigable rivers, and the adjacent towns and villages, and in other parts of the kingdom, carrying fire arms or other offensive weapons, to the great terror of H. M.'s subjects and the hinderance of officers, &c., in order to be aiding and assisting in the clandestine running, landing, or carrying away prohibited and uncustomed goods, and to rescue the same after seizure; and that officers and their assistants had been wounded, and some of them murdered, in the execution of their offices, and great quantities of goods rescued; for preventing thereof enacts that upon information upon oath before a justice of peace, that three or more persons are, or have been, assembled, to be assisting in the running, landing, or carrying away prohibited or uncustomed goods, or to rescue the same, after seizure, from the officers of customs or excise, and are or have been armed with fire-arms or other offensive arms or weapons; such justice shall grant his warrant to constables and other peace officers, requiring them to take to their assistance as many of H. M.'s subjects as may be thought necessary for apprehending the said persons; and such justice shall, if upon examination he find cause, commit such persons to the next county gaol, there to remain without bail, until discharged by due course of law; and such persons, upon due proof of their being assembled and armed as aforesaid, in order to be aiding and as-

sisting in the clandestine running, landing, rescuing, or carrying away prohibited or uncustomed goods, upon conviction shall be adjudged guilty of felony, and be transported for seven years. 9 G.2. c.35.

Rewards for apprehending offenders.

§ 11. Every person who shall apprehend such an offender, shall receive 50*l.* immediately after his conviction, upon demand thereof, by tendering a certificate under the hand of the judge, certifying the conviction, and that the offender was taken by the person claiming the reward.

And if any person shall lose a limb or an eye, or be otherwise maimed or dangerously wounded in apprehending, or endeavouring to apprehend, or in making pursuit after any such offender, he shall, upon conviction, receive 50*l.* over and above any other reward he may be entitled to by this act.

And if any person shall be killed in endeavouring to apprehend, or in making pursuit after any such offender, his executors or administrators (upon certificate under the hands and seals of the justice or justices of assize for the county where the fact was done, or the two next justices of peace, of such person being so killed, which certificate they are upon sufficient proof to give,) shall receive 50*l.* over and above any other reward that the person killed may be entitled to by this act. (See § 15. *infra.*)

Reward to informers.

§ 12. If any such offender, within three months after his offence, and before his conviction, shall discover two or more of his accomplices to the commissioners of customs or excise, so as two of them at least be convicted, he shall receive 50*l.* for every offender so discovered, and also be acquitted of his own offence. (*Infra*, § 16.)

Being two in number, and having cart and horses, within five miles of the coast or navigable river.

§ 13. All persons who, to the number of two or more in company, shall be found passing within five miles from the sea-coasts, or from any navigable river, with one or more horses, or with any cart or carriage, whereon there shall be laden more than six pounds of tea, or brandy, or other spirits, exceeding five gallons, not having paid the duties, or not having a permit for the same, or any other foreign goods above the value of 30*l.* landed without due entry and payment of the duties, and shall carry any offensive arms or wear any vizard, mask, or other disguise, or shall forcibly obstruct or resist any officer of the customs or excise in seizing or securing any prohibited, uncustomed, or run goods, or other execution of their office, shall be deemed runners of foreign goods, within the meaning of the said act of 8 *G.* 1 *c.* 18. although no proof shall be made that such goods were run, or had not been entered and paid duty; but the proof of such entry and payment, and how they came by the goods, shall lie on such persons; and every person convicted of any such offence shall be guilty of felony, and transported for seven years. (See 1 *Russ.* 166.)

§ 14. And all the goods so found, and all weapons, and arms, and all the furniture of their and every of their horse and horses, cattle and carriages, and the chests and other package, shall be forfeited.

Officer or other person wounded;

§ 15. If any officer of the customs or excise shall lose any limb or an eye, or be otherwise maimed or dangerously wounded by any offender last mentioned, in apprehending or endeavouring to apprehend him, or making pursuit after such offender, he shall on the conviction of such offender have a reward of 50*l.* over and above any other reward he may be entitled to by this act; and if any person be killed in apprehending or endeavouring to appre-

or killed.

9 G. 2. c. 35. hend, or in making pursuit after such offender, his executors or administrators, (on certificate under hand and seal of the justice of assize for the county where the fact was done, or the two next justices of the peace, of such person being so killed,) shall have 50*l.* over and above any other reward they may be entitled to by this act. (See § 11. *ante.*)

Informer. § 16. If any person shall in three months after such last-mentioned offence committed, discover to the commissioners of the customs or excise any offender so as he be convicted, he shall have 50*l.* for every such offender, over and above any other reward he may be entitled to by any law at the time of this act passed, in being. (See *ante*, § 12.)

Rewards, how payable. § 17. And the commissioners of the customs and excise shall cause the rewards to be paid out of the said revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing such certificate of the person being killed; and if any dispute shall arise between the persons entitled to the reward, the same shall be adjudged by the commissioners.

Persons forcibly hindering, &c. officers, being on board any ship, &c. their aiders, &c. to be transported. § 28. If any officer of customs or excise, being on board any ship, &c. within the limits of any of the ports of this kingdom, be forcibly hindered, opposed, obstructed, wounded, or beaten in the execution of his office or duty, all persons so forcibly hindering, &c. and all such as shall act in their aid or assistance, being convicted, shall be transported for a term not exceeding seven years.

19 G. 2. c. 34. Armed persons to the number of three, assembled to assist in the illegal exporting or running of goods. By stat. 19 *G.* 2. *c.* 34. § 1. If any persons, to the number of three or more, armed with fire-arms or other offensive weapons, shall be assembled in order to assist in the illegal exportation of wool or other goods prohibited to be exported, or in running, landing, or carrying away prohibited or uncustomed goods, or goods liable to pay duties which have not been paid or secured, or in re-landing goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or assault any revenue officer in seizing or securing such goods, or shall maim or dangerously wound any such officer attempting to go on board any vessel within the limits of any part of this kingdom, or shoot at, maim, or dangerously wound him when on board, and in due execution of his duty, he shall be guilty of felony without benefit of clergy. (*Vide* stat. 52 *G.* 3. *c.* 143. § 11. *post.*)

Mode of apprehension. § 2. And if any person shall be charged with any the said offences before a justice of the peace, or a judge of K. B., by information on oath of one or more credible persons by him or them to be subscribed, the justice shall forthwith certify the same under his hand and seal, and return the information to one of the secretaries of state, who shall lay the same before the king in council, who may thereon make his order, commanding the offender to surrender in 40 days after the first publication thereof in the gazette, to the lord chief justice or any other of the justices of the K. B., or to some justice of the peace, who shall, upon such offender surrendering himself, commit him to gaol, to answer the charge against him according to due course of law; which order the clerks of the privy council shall cause to be forthwith published in the two successive gazettes, and to be trans-

mitted to the sheriff of the county where the offence was committed; who shall in 14 days cause the same to be proclaimed between ten in the morning and two in the afternoon in the market places, on the market days of two market towns in the same county, near the place where the offence was committed; and a copy of the order shall be affixed on some public place in the said towns; and if such offender shall not surrender pursuant to such order, or if he shall escape after surrender, he shall, from the day appointed for his surrender, be taken to be convicted and attainted of felony without benefit of clergy. See also stat. 24 *G.* 3. *sess.* 2. *c.* 47. § 12. and 52 *G.* 3. *c.* 143. *post.* 19 G. 2. c. 34.

§ 3. Every person who shall, after the time appointed for the surrender of any person charged upon oath with any of the offences aforesaid shall be expired, harbour, aid, or succour such person, knowing him to have been so charged, and to have been required to surrender, and not to have so surrendered, being prosecuted within one year after the offence, and lawfully convicted, shall be adjudged guilty of felony, and be tranported for seven years. *See also stat.* 24 *G.* 3. *sess.* 2. *c.* 47. § 13. Harbouring offenders.

§ 4. Nothing herein contained shall extend to prevent any judge, justice of peace, magistrate, officer, or minister of justice whatsoever, from apprehending any offender against whom such order for surrender shall be made, by the ordinary course of law; and in case he shall be taken and secured before the time be expired within which he is required to surrender, no further proceedings shall be had upon the order in council, but he shall be brought to trial by due course of law. *See also stat.* 24 *G.* 3. *sess.* 2. *c.* 47. § 14. Judge, &c. may apprehend offenders by ordinary course of law.

§ 5. Offences relating to the customs or excise, made felony by this or any other act, may be tried in any county in *England*, as if the fact had been therein committed; but no attainder for offences made felony by this act shall work corruption of blood, loss of dower, or forfeiture of lands or tenements. Felonies may be tried in any county.

By stat. 43 *G.* 3. *c.* 157. § 2. Every offence made felony by 19 *G.* 2. *c.* 34. may be tried in any county in *England*, as if the fact had been therein committed; but no attainder for offences made felony by the said act shall work corruption of blood, loss of dower, or forfeiture of lands or tenements. 43 G. 3. c. 157.

By stat. 19 *G.* 2. *c.* 34. § 6. If any revenue officer or other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid or secured duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten, wounded, maimed, or killed by any offender against this act, or the goods so seized be rescued, the inhabitants of the rape, lath, or hundred, shall answer the damages sustained by such officer or person, and also pay 100*l.* to the executors or administrators of such person so killed, so as the sum to be recovered for such beating, wounding, or maiming, exceed not 40*l.*, nor for the loss of the goods 200*l.* against the said inhabitants, to be recovered and levied as in cases of robbery by stat. 8 *G.* 2. *c.* 16. 19 G. 2. c. 34. Hundred shall answer damages.

Grosvenor v. *St. Augustine's Lath* (*Kent*), *E.* 50 *G.* 3. 12 *East*, 244. An action of debt for 100*l.* lies upon the stat. 19 *G.* 2. *c.* 34. § 6. against the inhabitants of a lath in *Kent* by the executor of a revenue officer, who being in a boat between high and low water

19 G.2. c.34. mark, in pursuit of a smuggling boat in which were offenders against the act, receives a mortal wound from a shot fired *by a person on the shore within the lath,* though the officer afterwards *dies* on the high sea beyond the low water mark, and consequently *out of the lath;* and the act gives the remedy against the inhabitants of the lath, &c. where the offence is committed, *i. e.* where the officer endeavouring to apprehend the offender is killed.

§ 7. But no person shall recover damages for such beating, wounding, maiming, or loss of goods, unless he cause notice to be given in four days to two inhabitants of some town, village, or hamlet near to the place where such fact shall have been committed, and in eight days make oath before a justice whether he do know any of the persons concerned; and if he declare that he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give such notice and enter into such recognizances, as persons robbed are by stat. 8 *G.*2. *c.* 16. directed to give.

§ 8. When the offender shall be convicted in six months, the hundred, &c. shall not be liable.

§ 9. The action against the hundred, &c. must be commenced within a year.

Rewards for apprehending. And by stat. 19 *G.*2. *c.*34. § 10. Every person who shall take, or discover so that he may be taken, any person so advertised and not surrendering, and cause him to be brought before a judge of the K. B. or justice of the peace for *London* or *Middlesex*, (who shall commit him to *Newgate*,) shall receive 500*l.* for every such person so apprehended, in one month after execution awarded, from the commissioners of the customs or excise respectively: and if any offender, against whom no such order of council shall have been made, shall himself so discover or apprehend any other against whom such order hath been made, he shall be acquitted of all such his offences for which no prosecution is then commenced, and shall also have his share of the reward: and if any person shall lose a limb or an eye, or be otherwise grievously maimed or wounded in apprehending or pursuing such offender, he shall receive 50*l.* over and above such other reward as he may have as apprehender by this act; and if any person shall be killed in apprehending or pursuing, his executors or administrators shall receive 100*l.*

§ 11. And if any offender, before such order for his surrender, shall discover two or more accomplices so as they be convicted, he shall receive 50*l.* for each, and be discharged of all such his own like offences, then before committed, for which no prosecution shall be then commenced.

Case of John Harvey. With respect to the proceedings on this statute, see the case of *John Harvey, Fost.* 51., in which the court said, This is a very penal law, and it would be of dangerous consequence to give the sheriff a greater latitude than the legislature intended to give him. Some latitude it did intend to give, and therefore did not confine him to the *next* market towns, because that would have rendered the execution of the act difficult, and subject to great niceties. But the law did not intend to leave the matter wholly to the discretion of the sheriff, and therefore it requireth that it be done in the market towns (comparatively) *near* the place.

Note. This stat. 19 *G.*2. *c.*34. was at first but temporary; but

was continued by 26 *G*.2. *c*.32.—32 *G*.2. *c*.10.—4 *G*.3. *c*.12.—11 *G*.3. *c*.51.—19 *G*.3. *c*.69.—28 *G*.3. *c*.23.—36 *G*.3. *c*.40. § 13. and made perpetual by 43 *G*.3. *c*.157. A question appears to have been raised, whether the 28 *G*.3. *c*.23. did continue this statute, as it did not properly recite its title. A part of the title of the 19 *G*.2. *c*.34. is "An act to indemnify certain persons upon the terms *in this act* mentioned, and *for relief* of officers, &c.;" but the 28 *G*.3. *c*.23. recites the title a little differently, "upon the terms *therein* mentioned, and *for the relief* of officers, &c.;" but the Court held that the 19 *G*.2. *c*.34. was continued; for the legislature, in continuing a statute, is not bound to use any particular form of words.—*Longmead's Case*, 2 *Leach*, 694. 1 *Russ.* 166. *n*. (*f*). 19 G.2. c.34.

By stat. 24 *G*.2. *c*.40. § 28. it is enacted, that if any persons, to the number of five or more, shall, in a tumultuous and riotous manner, assemble themselves to rescue any offenders against this or any other act relating to spirituous liquors or strong waters, or for licensing the retailers thereof, or to assault, beat, or wound any person or persons who shall have given, or be about to give, any information or evidence against, or shall have discovered or given evidence against, or shall seize, or bring to justice, any person or persons offending against this or any of the said former acts; or forcibly to oppose the execution of any of the powers given by this act: all persons so assembling, their aiders and abettors, shall be guilty of felony, and liable to pains and penalties as in cases of felons; and the courts before which they shall be convicted shall have power to transport them for seven years.

24 G.2. c.40. Persons riotously rescuing offenders against the acts relating to spirits, &c. or assaulting informers, guilty of felony, and may be transported for seven years.

By stat. 19 *G*.3. *c*.69. § 9. If any persons to the number of two or more in company, shall be found passing in any part of this kingdom with one or more horses, or with any cart or carriage, whereon there shall be laden more than six pounds of tea, or five gallons of foreign brandy or other foreign spirits, not having paid the duties, or not having a permit with the same, and shall carry any offensive arms or weapons, or wear any vizard, mask, or other disguise, it shall be lawful for the officers of customs or excise, and the persons acting in their aid, to stop, arrest, and detain such persons, and convey them before a justice of peace, who, if he see cause, shall commit them to the next county gaol, there to remain without bail or mainprize, till the next general quarter-sessions, to be tried as by this act is directed.

19 G.3. c.69. Persons to the number of two or more, passing with horse, cart, &c. on which there shall be tea, &c. armed or disguised, may be arrested and committed till the quarter sessions.

§ 10. If any person shall assault, molest, obstruct, or hinder any officer of customs or excise, in due seizing or securing coffee, tea, cocoa-nuts, chocolate, foreign spirituous liquors, or any other goods which by such officers may be seized by virtue of this or any other act now in force; or shall by force or violence rescue, or cause to be rescued, any such goods, after the same shall have been seized by such officers, or shall attempt so to do; or after such seizure shall cut, stave, break, or otherwise destroy or damage any casks, boxes, or package, wherein the same shall be contained; it shall be lawful for such officers, and all persons acting in their aid, to stop, arrest, and detain the person so offending, and carry him before a justice of peace near the place where the offence shall be committed, who, if he see cause, shall commit the person to the next county gaol, until the next quarter sessions, to be tried as by this act is directed.

Persons assaulting, &c. officers in seizing goods, or rescuing goods, or destroying casks, &c. may be arrested and conveyed before a justice, and committed till the quarter sessions.

19 G. 3. c. 69. Officers to enter into recognizance.

§ 11. The officer who shall convey any offender arrested by authority of this act, before a justice as aforesaid, shall, if the offender be committed, enter into a recognizance in 40*l.* to appear and prosecute him at the next quarter sessions; and the commissioners of customs and excise are to order the charges of the prosecution to be paid out of any money in the hands of the receivers-general of those revenues.

Trial and punishment of offenders committed till the quarter sessions.

§ 12. It shall be lawful for the justices at such quarter sessions, to hear and determine such offences; and if the person committed shall be convicted, they may, in lieu of any other punishment, to which he might be liable for the same offence by any former act, commit him to the house of correction for the county or place, for a term not exceeding three years, nor less than one year.

If convict deemed proper to serve H. M.

§ 13. If any person so convicted shall be approved of by any officer of the land-forces or fleet, as a proper person to serve H. M., the justices shall, in lieu of any other punishment, deliver him over to such officer, he giving a receipt for what men are so delivered to him; and such officer may, if he find it necessary, detain such man in some secure place; and no person so delivered shall be taken out of H. M.'s service by any process other than for some criminal matter.

In what cases justices may adjourn.

§ 14. If the justices, at the time of convicting any such offender, shall not be attended by a proper land or sea officer, they may adjourn to some other day, and give directions for securing the offender, and cause notice to be given to any such officer, of the day and place of adjournment, who shall attend in person or by deputy.

Gaoler, parish-officers, &c. suffering escape, &c.

§ 15. It shall be lawful for the said justices to impose upon any gaoler, or keeper of a house of correction, for suffering any person committed to his custody to escape, or upon any constable, parish or town officer, for making default in the execution of any warrant or precept to him directed, a fine not exceeding 10*l.*, and cause it to be levied by distress and sale of the offender's goods, and paid to the informer.

Second and sixth sections of articles of war to be read to such persons.

Oath to be tendered.

§ 16. The justices shall cause the second and sixth sections of the articles of war against mutiny and desertion to be read in their presence to the person so to be delivered as aforesaid, and shall tender to him the oath mentioned in the third section of the articles of war; and shall certify under their hands, that such person is adjudged to serve H. M., setting forth his name, age, parish, and last place of abode, if known, and that the second and sixth sections of the said articles were read to him, and that he had taken, or refused to take the said oath, and shall deliver such certificate, together with the man, to the officer or person appointed to receive him, and he shall thereupon be deemed to be enlisted; and the said justices shall forthwith cause an entry to be made in a book to be kept for that purpose, of the names of the men so delivered, the ages, parishes, and places of their last abode, if known, and of the time and place when and where delivered, the names of the officers or persons who received them, and for what regiment, company, or ship they were so received; and shall cause copies of such entries, attested by themselves, or the clerk of the peace, within forty days after delivering such men, to be transmitted to the office of the secretary at war, or admiralty.

24 G. 3. sess. 2.

By stats. 24 *G.* 3. *sess.* 2. *c.* 47. § 15. and 34 *G.* 3. *c.* 50. § 5. If

any officer of the navy, customs, or excise, *being on shore* (a), going on board, being on board, or returning from on board, any ship, boat, or vessel, within the limits of any port of this kingdom, or within four leagues from the coast, (eight leagues by stat. 42 *G.* 3. *c.* 82. § 2, 3.) shall be hindered, opposed, obstructed, or assaulted, in the execution of his office, by any person whatsoever, either in the day-time or night, or if any person acting in his aid shall be so hindered, &c. the person so hindering, &c. and all such as shall act in their aid, may be carried before a justice of peace near the place where the offence shall be committed, who shall commit them to the next county gaol, until the next court of oyer and terminer, great session, or gaol delivery, or until delivered by due course of law; and in case an indictment shall be found against them, they shall plead thereto without having time to traverse the same; and being convicted, shall be sentenced to hard labour on the river Thames, or other navigable river in England, for any term not exceeding three years, according to the directions of 19 *G.* 3. *c.* 74. or be committed to the common gaol or house of correction for any term not exceeding three years. c. 47. and 34 G. 3. c. 50. Persons obstructing officers may be committed, and on conviction sentenced to hard labour, or committed to the house of correction for three years.

By stat. 24 *G.* 3. *sess.* 2. *c.* 47. § 16. If any person shall be brought before a justice of peace, being charged with having hindered, opposed, obstructed, or assaulted, any officer of the navy, customs, or excise, and it shall appear that the offence falls within the provisions of 19 *G.* 3. *c.* 69. the justice, if he thinks fit, may commit the offender to the common gaol until the next quarter sessions, to be tried and punished as by that act is directed. 24 G. 3. sess. 2. c. 47.

§ 19. If any person shall by this act be arrested and taken before a justice for what is by this act deemed a *misdemeanor*, such person shall not be admitted to bail, unless he enter into recognizance with two sufficient sureties, himself in 200*l.* and such sureties in 100*l.* each, to appear at the next general gaol delivery for the county for which the justice before whom he shall be brought shall act, and answer to any indictment which may be found at such court against him for such misdemeanor; which recognizance shall be forthwith transmitted to the clerk of assize. Bail.

By stat. 52 *G.* 3. *c.* 143. § 1. After reciting it to be expedient that the provisions in any laws then in force for collecting H. M.'s revenue in *G. B.*, whereby the penalty of death is imposed for any act done in breach of or in resistance to the said laws, or any of them, should be amended and reduced into one act; it is enacted, that in all cases where any act to be done or committed after the passing of this act, in breach of or in resistance to any part of the laws for collecting H. M.'s revenue in *G. B.*, would by the laws now in force subject the offender to suffer death, as guilty of felony, without benefit of clergy, by virtue of the said laws, or any of them, such act, so to be done or committed, shall be deemed and taken to be felony with benefit of clergy, and punishable only as such, unless the same shall also be declared to be felony without benefit of clergy by this act. 52 G. 3. c. 143. Offences against revenue laws—how punishable.

§ 11. If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall hereafter within *G. B.*, Punishment for assisting with

(a) *i. e.* on land, and an officer of excise seizing soap in the execution of his office, at an inland place, at any distance from the sea, is within the scope and protection of this act. *R.* v. *Brady and others*, 3 *Bos. & Pull.* 187. 2 *Leach*, 803.

52 G. 3. c. 143.

arms in the illegal exportation of wool or other goods, or in opposing.

or within the limits of any port, harbour, or creek thereof, or within the *Isle of Man*, or within the limits of any port, harbour, or creek thereof, be assembled in order to be aiding and assisting in the illegal exportation of wool or other goods prohibited to be exported; or in the carrying of wool or other such goods in order to such exportation; or in the illegal running, landing, or carrying away prohibited or uncustomed goods, or goods liable to pay any duties which shall not have been paid or secured; or in the illegal relanding of any goods whatsoever, which shall have been shipped or exported upon debenture or certificate, or from any warehouse wherein such wool or other goods shall have been deposited under any act of parliament for the securing the home consumption duties thereon; or in rescuing or taking away any such wool or other goods as aforesaid after seizure from any officer of the customs or excise, or other officer authorised to seize the same, or other person employed by him or assisting him, or from the place where the same shall have been lodged by him; or in rescuing any person who shall have been apprehended for any of the offences made felony by any act relating to the revenues of customs or excise of *G. B.*, or in preventing the apprehending any person who shall have been guilty of any such offence; or in case any persons, to the number of three or more, so armed as aforesaid, shall hereafter within *G. B.*, or within the limits of any port, harbour, or creek thereof, or within the *Isle of Man*, or within the limits of any port, harbour, or creek thereof, be so aiding or assisting; or if any person shall maliciously shoot at (*a*) or upon any ship, vessel, or boat belonging to H. M.'s navy, or in the service of the customs or excise, within the limits of any port, harbour, or creek of *G. B.*, or within the *Isle of Man*, or within the limits of any port, harbour, or creek thereof, or in any port of the *British* or *Irish* channels, or on the high seas within 100 leagues of the coast of *G. B.* or *Ireland*; or if any person shall, either on shore or on the water, within the limits last aforesaid, maliciously shoot at, maim, or dangerously wound any officer or officers of H. M.'s army, navy, marines, militia, or volunteers, or any other H. M.'s military or naval forces, or of the customs or excise, or any other person or persons aiding or assisting any such officer or officers when acting in the due execution of his or their duty under any of the powers, authorities, or provisions of any act relating to the revenues of customs or excise of *G. B.*, or of any act for the prevention of smuggling; every person so offending, and every person aiding, abetting, or assisting therein, shall, being thereof convicted, be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy; and every such offence which shall be committed within any port, harbour, creek, haven, or roadstead of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man* respectively, the same may and shall be enquired of, tried, and determined in the said islands respectively; and every such offence committed elsewhere out of the U. K. may and shall be enquired of, tried, and determined, in any county of the U. K.; and every such offence com-

Or being so aiding or assisting.

And any person shooting at a ship or boat.

And any person shooting at, maiming, &c. any officer, &c.

Guilty of felony without benefit of clergy.

(*a*) To constitute the offence under this statute, the shooting must be malicious. If a custom-house vessel chace a smuggler and fire into her without hoisting such a pendant and ensign as stat. 56 G. 3. c. 104. § 8. requires, returning the fire will not be malicious. *Rex* v. *Reynolds*, *Cor. Holroyd J. at Newcastle Sum. Ass.* 1821, *and before the Judges M. T. following. M. S. C. C. R.*

mitted within *England*, *Scotland*, or *Ireland* respectively, may and shall be enquired of, tried, and determined within such part of the said U. K. in which such offence shall have been respectively committed, but in any county or shire of such part of the said U. K., in such manner and form as if the offence had been committed in the county or shire in which the same shall be enquired of, tried, and determined. (See 1 *Russ.* 161.) 52 G.3. c.143.

§ 12. If any person shall be charged by information on oath before any justice of the peace, or other person competent to take such information in any part of the U. K., with being guilty of so assembling, aiding, or assisting, or of so maliciously shooting, maiming, or wounding as aforesaid, within the limits hereinbefore respectively specified, in any case wherein any such officer as aforesaid, or any person aiding or assisting any such officer in the execution of his duty as aforesaid, shall have been killed, such information shall be forthwith certified by the justice or other person taking the same under his hand and seal, to one of H. M.'s principal secretaries of state, who shall forthwith lay the same before H. M. in his privy council; and H. M. may thereupon, if he shall so think fit, by his order in council, require and command the person so charged with such offence, that he do, within the space of 60 days, or such longer time as to H. M. shall seem fit, after the publication of such order in the *London* Gazette, surrender himself to the lord chief justice, or any other justice of the K. B., or to any justice of the peace, or other person competent to take such surrender as in such order shall be specified; and may further order and require such order to be proclaimed by the sheriff of the county where the offence shall have been committed, if committed within any county of the U. K.; and if not committed within any such county, then by the sheriff of any county near to the place wherein the offence shall have been committed; and the clerks of H. M.'s privy council shall cause such order to be forthwith printed and published in the *London* Gazette, and such publication to be repeated once in every week after such first publication, until the expiration of the said sixty days, or such other times as shall be appointed by such order for the surrender of such offender, and shall also cause a copy of such order, attested by the signature of one of the said clerks, to be transmitted to the sheriff of the county specified in such order, who shall, within fourteen days after the receipt of such copy, cause the same to be proclaimed between the hours of ten in the morning and two in the afternoon, in the respective market places, upon the respective market days of two market towns in the same county, if there shall be two such towns; and if there shall be only one such town, then in such town, and in some other place of general resort within such county, and shall also cause a true copy of such copy of such order to be affixed upon some public place in each of such market towns or other place where such proclamation shall be made; and if the person charged with such offence as aforesaid shall surrender himself according to such order, the justice or other person to whom he shall so surrender shall commit him to some gaol or prison within the limits of his jurisdiction, to be there dealt with according to law; but if such person so charged and proclaimed as aforesaid shall not so surrender himself within the time limited in such order, or shall after surrender and before trial for

Proceedings in cases of shooting or wounding, &c.

52 G.3. c.143. such offence escape from justice, such person shall, from the day appointed for such surrender, be adjudged to be a person attainted of felony, and shall suffer death as a felon, without benefit of clergy, if the offence shall be charged to have been committed in *England*, or within the limits of any port, harbour, or creek in *England* or *Ireland*, or within one hundred leagues of the coast thereof; and it shall be lawful for the court of K. B., or the justices of oyer or general gaol delivery, or great sessions, for the county or place where such offender shall be, to award execution against such offender, in such manner as if he had been convicted and attainted in the said court of K. B., or before such justices of oyer and terminer, or general gaol delivery or great sessions respectively; and if the offence shall be charged to have been committed in *Scotland*, or within any port or harbour, or creek thereof, or within one hundred leagues of the coasts thereof, such offender shall in the like case be adjudged, deemed, and taken to be convicted of a capital crime, and shall suffer the pain of death, and confiscation of moveables, as in the case of a person found guilty of a capital crime and under sentence for the same; and it shall be lawful for the court of justiciary, or the lords of justiciary in their circuits in *Scotland*, to award execution against such offender, in such manner as if he had been found guilty and condemned in the said courts of justiciary or circuit courts respectively.

Felony without clergy.

Execution may be awarded.

3 G.4. c.114. Persons convicted of assaulting revenue officers may be sentenced to hard labour.

By stat. 3 *G.* 4. *c.* 114. Persons convicted of assaulting an officer of the customs or excise, or any other officer of the revenue, in the due discharge and execution of his duty, or of assaulting any person or persons acting in aid of any such officer or officers in the discharge and execution of his duty, may be sentenced to imprisonment *with hard labour*. See title "Offenders," vol. iii.

§ 1. (o) Officers—Indemnity, &c.

11 G.1. c.30. Officer on trial need not prove his commission.

By stats. 11 *G.* 1. *c.* 30. § 32., 26 *G.* 3. *c.* 77. § 12. If upon the trial of any indictment, information, action, suit, or prosecution, or in any proceedings relative thereto, any question shall arise, whether any person be an officer of any branch of the revenue, or commissioned to act as such, proof shall be admitted that such person was reputed to be, or had as such exercised such office, or acted under such commission, at the time when the matter in controversy shall have been done or committed, or omitted to have been done or performed, without producing or proving the particular commission or authority whereby such officer was appointed; and such proof shall be deemed good and legal evidence, unless by other evidence the contrary shall be made appear.

19 G.2. c.34. Probable cause of seizure.

By stat. 19 *G.* 2. *c.* 34. § 16. If any information shall be brought to trial for the seizing of any ship as forfeited for illegally carrying goods, or of goods prohibited, uncustomed, or illegally carried or exported, or intended or attempted to be exported, or re-landed after exported upon debenture or certificate, if a verdict shall be found for the claimer, and it shall appear to the judge or court that there was a probable cause of seizure, the judge or court shall certify it on the record; in which case the defendant shall not have costs, nor shall the seizer be liable to any prosecution; and if any action shall be commenced against the seizer, and a verdict be given against him, if the court or judge shall certify that there

Judge to certify.

was a probable cause of seizure, the plaintiff, besides his ship or goods, or the value thereof, shall have no more than two-pence damages, and no costs; nor shall the defendant be fined above one shilling. 19 G. 2. c. 34.

9 G. 2. c. 35. Officers may oppose force to force.

By stat. 9 *G.* 2. *c.* 35. § 35. If any person passing in a public and avowed manner with prohibited and uncustomed goods, and armed with pistols, guns, cutlasses, or other offensive weapons, shall molest or resist the officers of the customs or excise endeavouring to search for or seize the same, by beating, maiming, or wounding them, or any person assisting them, they may oppose force to force; and if any person so molesting or resisting the officers be wounded, maimed, or killed, such officers and their assistants may plead the general issue, and give this act and the special matter in evidence; and all justices of the peace and others, before whom they shall be brought for such wounding, &c. shall admit them to bail.

57 G. 3. c. 87. Penalty on persons obstructing officers, 200*l.*

And by stat. 57 *G.* 3. *c.* 87. § 9. Reciting that "whereas further provision is necessary for the protection of officers in the execution of their duty," it is enacted, that if any officer or officers, or other person or persons in 56 *G.* 3. *c.* 104. or this act mentioned, or other person or persons acting in their aid or assistance, being on shore or going on board, or being on board or returning from on board any ship, boat, or vessel liable to search under any law or laws now in force relating to H. M.'s revenue of customs or excise, shall be hindered, opposed, molested, or obstructed in the due execution of his or their office or duty by any person or persons whatsoever, every person or persons so hindering, opposing, molesting, or obstructing such officer or officers, or other person or persons in the due execution of his or their office or duty, or so hindering, opposing, molesting, or obstructing any other person or persons acting in their or any of their aid or assistance, and also every person and persons aiding and assisting any such person or persons in the commission of any such offence, shall forfeit the sum of 200*l.*

Preventing vexatious suits against officers.

See stat. 23 *G.* 3. *c.* 70. § 30. For preventing vexatious suits against officers of excise, the provisions of which, by stat. 24 *G.* 3. *sess.* 2. *c.* 47. § 3. are extended to officers of the customs and their assistants. See post, title "Excise in general."

19 G. 3. c. 69. Penalty on officers not doing their duty.

By stat. 19 *G.* 3. *c.* 69. § 32. If any officer of the customs or excise shall not use his best endeavours to seize any tea, coffee, or foreign spirituous liquors liable to forfeiture, or to stop, detain, and carry before one or more justices any person whom he is authorised to stop; in such case one justice residing near to the place where such officer shall make default, on complaint thereof made to him within three months after such default, may examine into the truth of such complaint upon oath; and if it shall appear to the said justice that there is reasonable ground for the complaint, he shall transmit the said complaint, together with the examinations taken before him thereon, unto the commissioners of the customs or excise respectively; who shall, by such ways and means as to them shall seem meet, examine into the truth of the complaint. And in case they think fit on the ground thereof to dismiss the officer from H. M.'s service, he shall be incapable of executing any office in the customs or excise for the future. Provided that no person shall be compelled to go above five miles from his usual place of

19 G. 3. c. 69. abode to be examined before any justice, upon any complaint to be made to him as aforesaid.

§ I. (*p*) Jurisdiction of Justices.

8 G. 1. c. 18. Seizure of vessels, &c. of 15 tons shall be examined into by two justices.

By stat. 8 *G.* 1. *c.* 18. § 16. After reciting stats. 8 *Anne, c.* 7., and 8 *Anne, c.* 13. § 16. which laws have not had the good effects thereby proposed, in regard that the keeping and maintaining the horses seized from the time of the seizure to the time of condemnation in the court of *exchequer* is very chargeable, and the charge of condemning such vessels, boats, and horses is very great; therefore it is enacted, that all seizures of vessels or boats of 15 tons or under, by virtue of any act relating to the *customs*, for carrying uncustomed or prohibited goods, or for relanding debenture goods; and all seizures of horses or other cattle or carriages used for removing or carrying such goods, may be heard and determined by two justices in such manner as is appointed by the act of 6 *G. c.* 21. § 20. except as therein excepted; that is to say, all such seizures may in a summary way be determined by two justices of the peace residing near the place where the seizure is made (being out of the limits of the chief excise office in *London*); who shall summon the party accused, and on appearance or default proceed and give judgment, and issue warrants for sale of such as shall be by them condemned, and whose judgment shall not be liable to any appeal or *certiorari*. *Vide* 49 *G.* 3. *c.* 65.

24 G. 3. sess. 2. c. 47.

By stat. 24 *G.* 3. *sess.* 2. *c.* 47. § 30. All seizures of horses, cattle, carts, waggons, boats, and carriages whatsoever, for being used in the removing, carriage, or conveyance of any goods, or for any other cause of forfeiture contrary to this or any other act relating to or for preventing frauds in the revenue of the customs, shall and may be heard and determined by two neighbouring justices, in such manner and under the like rules as the seizure of any horse, cattle, or carriage liable to forfeiture for being used in removing, carrying, or conveying of any prohibited or run goods by virtue of any act of parliament; and such judgment shall be final, and not liable to any appeal, or any writ of *certiorari*.

47 G. 3. sess. 2. c. 66. Justices of peace may take cognizance of offences against customs and excise on the high seas.

By stat. 47 *G.* 3. *sess.* 2. *c.* 66. § 44. Whereas doubts have arisen whether justices of the peace can take cognizance of offences and forfeitures committed or arising on the high seas, and without the limits of the county, city, town, or place, of and in which they shall or do act as such justices; it is enacted, that from and after the passing of this act, in all cases in which any justice or justices of the peace are empowered to take cognizance of any offence, or of any forfeiture in this act, or in any act or acts relating to the revenue of customs or excise, it shall be lawful for any justice or justices of peace for the county, city, town, or place, within which the port or place into which any ship, vessel, boat, or goods, or any person or persons shall be taken, brought, or carried, under any act or acts relating to the revenue of customs or excise, shall be situated, to take cognizance of such offence or offences committed against the said act or this act, or such forfeiture or forfeitures, as if the same offence or offences had been committed, or the same forfeiture or forfeitures had been incurred on land, within the said respective jurisdictions of such justices.

49 G. 3. c. 65. Jurisdiction of

By stat. 49 *G.* 3. *c.* 65. § 1. It is enacted that any two justices for any county, riding, division, city, or liberty, wherein the offence

shall arise, or wherein the offender shall be found, may hear and determine all prosecutions for penalties incurred by any offence against any act now or hereafter to be made relating to the revenue of customs; and upon information exhibited before them for the recovery of any such penalties, summon the party accused, and upon appearance or default proceed to the examination of the fact, and upon due proof thereof, either upon confession or upon the oath of one witness (which oath the said justices are thereby empowered to administer) convict the offender in the said penalties; and in case of non-payment they may cause the same by warrant of distress and sale under their hands and seals to be levied upon the goods and chattels of the said offender, and in default of sufficient distress, commit to any of H. M.'s gaols in the county wherein the offence shall have arisen, or wherein the offender shall have been found, for the space of six months, or until the said penalty shall be paid.

49 G. 3. c. 65. — justices for fines incurred against the laws relating to the customs.

By § 2. Nothing in this act shall empower the said justices to hear or determine any prosecution for such penalties as aforesaid, in any case wherein the same shall in the whole exceed the sum of 50*l*., unless they shall be so empowered by any other act or acts of parliament now or hereafter to be made.

Not to apply to fines beyond 50*l*.

By stat. 56 *G*. 3. c. 104. § 14. After reciting the provisions of the 49 *G*. 3. c. 65. § 2., and that "it is expedient to repeal the said recited provision, and to give to H. M.'s justices of the peace the same jurisdiction in respect of forfeitures incurred under any act or acts now in force, or which shall hereafter be made, relating to H. M.'s revenue of customs, as they now have by law in respect of any forfeitures incurred under any act or acts relating to H. M.'s revenue of excise, it is enacted, that the said recited provision shall be repealed;" and that from and after the passing of this act it shall be lawful for any two or more of H. M.'s justices of the peace for any county, riding, city, division, or liberty, to examine into, hear, and determine all prosecutions for the condemnation of any seizure made under or by virtue of any act or acts relating to H. M.'s revenue of customs; and the said justices are hereby authorised and required, upon information exhibited before them, for the condemnation of any such seizure or seizures as aforesaid, to proceed thereon in the same manner and with the like powers and authorities as are given to them by any law or laws of excise now in force with respect to forfeitures for the breach of any law or laws of excise.

56 G. 3. c. 104. Provision in recited act limiting justices' jurisdiction repealed, and two justices empowered to determine in all cases of seizure under the laws of customs, as they are now empowered to do under the laws of excise.

By 49 *G*. 3. *c*. 65. § 3. Whereas doubts have arisen in proceedings before justices of the peace for penalties or forfeitures incurred by offences against the laws relating to the revenue of customs, where such justices have issued out summons for the appearance of the party against whom such proceedings have been instituted, which summons hath been left at the house or usual place of residence of such party, whether the same should be deemed sufficient, and as legal and effectual a notice as if the same had been personally served upon such party; for the removal of such doubts it is declared and enacted, that in all proceedings before any justices of the peace for any fine, penalty, or forfeiture incurred under any acts in force or thereafter to be made relating to the said revenue, every such summons so left as aforesaid and directed to such party by his right or assumed name, shall be (except where particular provisions are or shall be made for summon-

49 G. 3. c. 65. Summons left at house to be sufficient.

49 G.3. c.65. ing offenders, or for condemning seizures made from persons unknown,) deemed to be as sufficient a summons, and as effectual a notice, as if personally served, and as if the same were directed to such party by his proper name.

Imprisonment expired, to clear from fines. And by § 5. Where any such offender shall have been committed to any such gaol for default of such distress, and shall there remain until the expiration of the period for which he shall have been committed, he shall be wholly discharged from the payment of such penalty in respect whereof such warrant hath been issued, as if the full penalty had been paid by the said offender immediately upon his conviction.

Limiting the time for laying informations. And by § 6. No information or proceeding for any fine, penalty, or forfeiture incurred by any offence against any act now or hereafter to be made, relating to the said revenue, shall be exhibited or instituted before any justice or justices after the expiration of six months from the time of the offence whereby such fine, &c. hath been incurred.

[The succeeding sections of this act relate to the port of *London*.]

§ I. (q) Proceeding on Trials of Seizures, &c.

9 G.2. c.35. Justices, &c. on trial to proceed on the merits. By stat. 9 *G.* 2. *c.* 35. § 34. On all trials of seizures in the court of *exchequer*, or elsewhere, the seizure, together with the method and form of making it, shall be taken to have been made by the person who shall inform and sue for the same, and in the manner set forth in the information, without any evidence thereof; and all judges and justices of peace before whom the same shall be brought to trial, shall proceed to the trial of the merits of the cause, without enquiring into the fact, form, or manner of making the seizure.

12 G.1. c.28. Owners to prove payment of duties. By stat. 12 *G.* 1. *c.* 28. § 8. If any foreign goods shall be seized for non-payment of duties, or any other cause of forfeiture, and any dispute shall arise, whether the customs, excise, or inland duties have been paid for the same, or the same have been lawfully imported, legally compounded for, or condemned, or concerning the place from whence they were brought, the proof thereof shall lie on the owner or claimer, and not on the officer who shall seize or stop the goods.

In *Solomon* v. *Gordon and Bertie*, *E.* 12 *G.* 3. 2 *Black. Rep.* 813., which was an action of trespass against the defendants, custom-house officers, for seizing four boxes of plate-glass which the plaintiff's porters were carrying in the open streets of *London*, it was held that the *onus* of proving the non-payment of the duty lay on the defendants.

23 G.3. c.70. Claimers of goods seized to prove payment of the duties. But by stat. 23 *G.* 3. *c.* 70. § 35. it is enacted, that if any goods liable to duties of excise or inland duties shall be seized by virtue of any act now in force, or hereafter to be made; or if any action shall be brought by the owner or claimer thereof, against any officer of excise or inland duties, or any person acting in his assistance, for any thing done in pursuance of such acts, the proof of the payment of the duties shall lie upon the owner or claimer, and not on the person who seized the goods, or against whom the action shall be brought.

§ I. (r) Actions, Informations, &c. how to be commenced.

By stat. 56 *G.* 3. c. 104. § 15. It is enacted, "that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information against any person or persons for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures incurred under or by virtue of any act or acts now in force, or which shall hereafter be made, relating to either of H. M.'s revenues of customs or excise, or to issue or cause to be issued any writ or writs of appraisement for the condemnation of any ship or ships, boat or boats, or other vessel or vessels, or any goods, wares, or merchandise whatsoever, seized as forfeited under or by virtue of any such act or acts, unless the same be commenced, prosecuted, entered, filed, or issued by order of the commissioners of H. M.'s customs or excise, or by or in the name of H. M.'s attorney-general; and if any action, bill, plaint, information, or writ of appraisement is commenced, prosecuted, entered, filed, or issued by or in the name of any person or persons whatsoever, except upon such order as aforesaid, or by or in the name of H. M.'s attorney-general, the same and all proceedings thereupon had shall be null and void, and the court or courts, or justice or justices of the peace, where or before whom such action, bill, plaint, information, or writ of appraisement is or shall be so commenced, prosecuted, entered, filed, or issued, shall not permit or suffer any proceeding or proceedings to be had." See 5 *G.* 4. *c.* 94. *infra*, § II. (*g*).

56 G. 3. c. 104. No action to be brought for the recovery of penalties, &c. unless by order of the commissioners, or in the name of the attorney-general.

By stat. 26 *G.* 3. *c.* 77. § 14. If any prosecution shall be commenced or depending by any officer of customs or excise, for the recovery of any fine, penalty, or forfeiture incurred by virtue of any act now in force, or hereafter to be made, relating to the said revenues, it shall be lawful for H. M.'s attorney-general, in case it shall appear to his satisfaction that such fine, penalty, or forfeiture was incurred without any intention of fraud, to stop all further proceedings, by entering a *Noli prosequi*, or otherwise, on every such information, as well with respect to the share of such fine, &c. to which the officer shall be entitled, as to the share belonging to the king.

26 G. 3. c. 77. The attorney-general may stop prosecutions.

§ I. (s) Mitigation of Penalties.

By stat. 12 *C.* 2. *c.* 24. § 46. It shall be lawful for "justices of the peace, commissioners of excise, or any two of them, or their sub-commissioners respectively, from time to time, where they shall see cause, to mitigate, compound, or lessen such forfeiture, penalty, or fine, as in their discretion they shall think fit." See *infra*, 64.

12 C. 2. c. 24. Power of mitigating penalties.

And by stat. 23 *G.* 2. *c.* 21. § 38. It shall be lawful "to and for the said commissioners and justices, where they shall see cause, to mitigate or lessen any penalties and forfeitures in such manner as they shall think fit; the reasonable costs and charges of the officers, as well in making the discovery, as in the prosecution of the same, being always allowed over and above such mitigation, and so as such mitigation do not reduce the penalty to less than one-fourth part thereof over and above the said costs and charges."

23 G. 2. c. 21.

Not less than one-fourth exclusive of costs.

49 G.3. c.65.

By stat. 49 *G.* 3. *c.* 65. § 4. Where any party shall be convicted before any two or more justices of peace, in any penalty incurred by any offence against any act relating to the revenue of customs, wherein no power of mitigation shall be given, or where it shall be given not specifically by the same act, but only by reference to some other law, it shall be lawful for the justices, in cases where they shall deem it expedient, to mitigate the penalty, so as the sum to be paid by the party be not less than one half of the amount of the penalty in which he shall have been convicted.

Not less than one-half of penalty.

57 G.3. c.87. Treble value of goods.

Penalties of treble the value of goods, how to be adjusted, see stat. 57 *G.*3. *c.*87. § 8., *infra*, p.65.

47 G.3. sess.2. c.66. On mitigation of penalties under the revenue laws by quarter sessions or justices out of session, they may require offenders to enter into a recognizance for payment of the full penalty in case they be again convicted within three years of another offence.

Stat. 47 *G.*3. *sess.*2. *c.*66. § 43. After reciting, that whereas by the laws now in force, on prosecutions before justices for penalties under the laws relating to the revenue of customs in *England* and *Scotland*, such justices are in certain cases authorised, on conviction, to mitigate the penalties to be paid, and to reduce the amount thereof: and whereas it is expedient, for the better prevention of smuggling, that in all cases where penalties are so mitigated, the offenders should be required to give good and sufficient security to the crown for the payment of the full penalties in which they shall have been convicted, after deducting the sums which may have been paid on such conviction and mitigation, in case they shall at any time, within three years of the date of such conviction, be again convicted of any other offence against the revenue laws: Enacts, that in all cases where any person shall be convicted of any offence as aforesaid, before the court of quarter sessions, or before any justice or justices of the peace out of session, and such court, or justice or justices, shall mitigate the penalty or penalties incurred, it shall be lawful for such court of quarter sessions, or justice or justices of the peace, and they are respectively hereby required to take a recognizance from the offender or offenders, in double the amount of the sum in which he, she, or they may have been convicted, which recognizance or recognizances shall be given to H. M., his heirs and successors, with condition, that if such offender or offenders shall at any time, within three years from the date of such conviction, be again convicted of any offence against any law now in force or hereafter to be made, relative to the revenue of customs or excise, that such offender or offenders shall forfeit and pay to H. M. the amount of the sum or sums in which he, she, or they may have been convicted, after deducting the sum or sums paid according to such mitigation as aforesaid; and in every case where such recognizance or recognizances shall become forfeited, it shall be lawful for the said court, or any justice or justices of the peace, by warrant, to apprehend such offender or offenders; and in case he, she, or they shall not forthwith pay the sum or sums, according to such recognizance or recognizances, to levy the same upon the goods and chattels of the offender or offenders, or to commit such offender or offenders to gaol, there to remain for the space of twelve months, or until such sum or sums shall be paid.

On forfeiture of recognizances penalty may be levied by distress, &c.

1 G.4. c.43. Power of mitigating certain penalties imposed for smuggling offences repealed.

But by stat. 1 *G.*4. *c.*43. § 17. Whereas every person who is found or taken on board, or discovered to have been on board any ship, vessel, or boat liable to forfeiture, for being found or having been at anchor or hovering within certain distances of any of the dominions of H. M., with such goods on board as subject such

ship, vessel, or boat, or goods, to forfeiture, and every person found aiding or assisting in unshipping to be laid on land or ground, or carrying, conveying, concealing, or assisting in the carrying away, conveying, or concealing any foreign brandy, rum, geneva, or spirits subject to forfeiture, is in certain cases liable to the penalty or forfeiture of either treble the value of the goods that shall be found or taken from such person, or of the sum of 100*l.*, under the provisions contained in stat. 45 *G.* 3. *c.* 121. § 7.—57 *G.* 3. *c.* 87. —58 *G.* 3. *c.* 76. and 59 *G.* 3. *c.* 121., or some or one of the said acts: and it is expedient, for the further prevention of smuggling, that no such forfeiture of treble the value, or of the sum of 100*l.*, should in any such case be mitigated: it is enacted, that in every such case all power of mitigation of the said penalty or forfeiture of treble the value or of the sum of 100*l.*, in which any such person or persons shall be convicted, under and by virtue of any or either of the said recited acts, shall be and the same is hereby wholly repealed and taken away. 1 G. 4. c. 43.

§ 18. Provides that nothing in this act shall extend to repeal the powers granted to the commissioners of H. M.'s treasury, to mitigate or remit any such penalty or forfeiture by stat. 54 *G.* 3. *c.* 171. Not to affect the powers of the treasury under 54 G. 3. c. 171.

§ I. (*t*) Persons indicted, &c. may be apprehended, and bound to appear.

By stat. 26 *G.* 3. *c.* 77. § 18. Whenever any person shall be charged with assaulting or obstructing any officer of the customs or excise in the execution of his office, or person acting in his aid; or with rescuing or attempting to rescue by force uncustomed or prohibited goods after seizure; or of any offences respecting quarantine; and the same shall be made appear to any justice of the K. B. by affidavit or by certificate of an indictment or information filed against such person in the said court, for such offence; he may by warrant cause such person to be brought before him or some other judge of the said court, or before one justice of the peace, to be bound with two sureties in such sum as the said warrant shall express, to appear in the said court at the time mentioned in such warrant, to answer all and singular the indictments or informations for the said offences; and for want of such sureties, such judge or justice may commit such person to the common gaol until he shall have become bound or be discharged by order of such court, in term time, or by one of the judges of the said court in vacation; and the recognizance shall be returned and filed in the said court, and shall continue in force until such person be acquitted, or receive judgment, unless sooner ordered by the said court to be discharged. 26 G. 3. c. 77. When a warrant may be granted by a judge of the K. B.

By stat. 35 *G.* 3. *c.* 96. Where any person, by virtue of stat. 26 *G.* 3. *c.* 77. shall be detained in gaol for want of bail, the prosecutor of the indictment or information may cause a copy thereof to be delivered to him, or to the gaoler or turnkey, with a notice thereon indorsed, that unless he shall, within such time as shall be limited by the court of K. B., cause an appearance, and also a plea or demurrer to be entered, an appearance, and the plea of not guilty, will be entered in his name; and in case he neglect, the prosecutor, on an affidavit thereof, may cause such appearance and plea to be entered for him, and such proceedings shall be had 35 G. 3. c. 96. Where persons detained for want of bail, prosecutor may cause copy of indictment to be delivered without notice.

If on trial defendant acquitted, judge may discharge him.

as if the defendant had appeared and pleaded not guilty; and if upon trial the defendant shall be acquitted, the judge before whom the trial shall be made, may order him to be discharged.

§ I. (u) Condemnation of Seizures unclaimed.

57 G.3. c.87. Condemnation of seizures to be proceeded in though the owners of the goods do not appear.

By stat. 57 *G.* 3. *c.* 87. § 7. In all cases where any goods, wares, merchandise, boats, carriages, horses, or cattle, shall be seized as forfeited under any law of H. M.'s customs or excise, and no person shall appear to the officer who made such seizure to claim the same, if such seizure shall happen to be made out of the limits of the chief officer of excise in *London*, it shall be lawful for the officer who shall make such seizure to cause public notice to be given by proclamation at the next market town to the place where such seizure shall have been made, upon the market day next after the expiration of six days from the time of such seizure, of the day and place when and where the justice or justices of the peace will proceed to hear the matter of such seizure, and of condemnation of the goods so seized; in which case it shall be lawful for the said justices to proceed to examine into the cause of such seizure, and to give judgment for the condemnation of such goods, and of the casks, vessels, or other package or packages containing the same, and of the boat or boats, cart or carts, or other carriage or carriages, horse or horses, or cattle seized, as upon due examination shall appear to be forfeited; which judgments shall be as valid and effectual in law as if the owner thereof, or person in whose custody the same was or were at the time or times of the seizure thereof, had been respectively summoned to attend the said justice.

§ I. (w) Commissioners may order Vessels, &c. seized to be restored.

27 G.3. c.32. Goods forfeited may be restored.

By 27 *G.* 3. *c.* 32. § 15. In case of any goods whatsoever, or any ships, vessels, boats, horses, cattle, or carriages being seized as forfeited by virtue of any law relating to the customs, the commissioners on evidence given to their satisfaction that the forfeiture arose without any intention of fraud in the proprietor, may restore the same in such manner and on such terms as they shall direct; and if such proprietor shall comply with the terms so prescribed, the officer who seized the same shall not proceed for the condemnation thereof; but if he shall not comply with the terms prescribed, such officer shall be at liberty to proceed for condemnation of such goods, &c. But such owner accepting such terms shall not be entitled to any damages, or to maintain any action on account of such seizure.

51 G.3. c.96. Powers vested in the commissioners of the customs by recited act for restoring goods and vessels, &c. that have been seized, to the owners, un-

By stat. 51 *G.* 3. *c.* 96. All the powers vested in the commissioners of the customs by stat. 27 *G.* 3. *c.* 32. by which they are authorised to direct any goods or commodities whatever, or any ships, &c. &c. seized, to be restored to the proprietors, on the proof and on the terms in the said act mentioned, shall extend to authorise the commissioners of the customs in *England* to order any goods or commodities whatever, or any ships, &c. that shall have been or shall be seized as forfeited by any officer of the customs, or by any other person whatsoever, by virtue of any act

made for the protection of trade, the benefit of commerce, or the encouraging and increasing of shipping and navigation, or by virtue and in pursuance of any other act in any respect relating to the customs, to be restored to the proprietor, whether such goods, &c. shall have been seized as forfeited in *G. B.* or on the high seas, or in any other of H. M.'s dominions, in case evidence shall be given to the satisfaction of the said commissioners, according to their respective jurisdictions, that the forfeiture arose without any design or fraud in the proprietor of such goods, &c. &c.; and also, in case the seizure shall have been made by any such officer or other person in any of H. M.'s colonies, &c., or on the high seas; and it shall be made appear to the satisfaction of the commissioners of the customs, or any four or more of them, that such seizure was occasioned by the proprietor of any such goods, &c. &c. having acted in conformity with any orders which the chief officer of any such colony shall have deemed it expedient on any particular emergency to issue.

51 G.3. c.96. — der certain circumstances, to extend to seizures under any other act, provided the forfeiture arose without any design of fraud, &c.

§ 2. In any case wherein the said commissioners shall exercise the powers hereby vested in them, such goods, &c. &c. shall be restored to the proprietor on such terms and conditions as shall appear to the said commissioners to be reasonable, and as they shall think fit to direct; and if the said proprietor shall comply with the terms prescribed by such commissioners, it shall not be lawful for the officer or any other person who shall have seized such goods, &c. or any other person whatever on his behalf, to proceed in any manner for the condemnation thereof; provided that if such proprietor shall accept the terms prescribed by the said commissioners, such proprietor shall not have any recompence on account of the seizure or detention of such goods, &c. &c. or have any action whatever for the same.

Seizure to be restored to the proprietors on such conditions as the commissioners shall direct, &c.

And by stat. 47 *G.* 3. *sess.* 2. *c.* 30. § 19. In case any goods or commodities, or any ships, vessels, boats, horses, cattle, or carriages, shall be seized as forfeited by virtue of any act relating to the excise, it shall be lawful for the commissioners of excise in *England* and *Scotland* respectively, on evidence given to their satisfaction that the forfeiture arose without any intention of fraud, to order the same to be restored to the proprietor or claimant, on such terms and conditions as they shall think fit; but if such proprietor or claimant shall not comply with the terms or conditions prescribed by the commissioners, such goods, &c. shall be proceeded against for condemnation; and if he shall accept them, he shall not be entitled to any recompence or damage on account of the seizure.

47 G.3. sess.2. c.30. Commissioners of excise may restore seizures on such conditions as they deem proper.

§ I. (*x*) Treasury may restore Seizures, or remit or mitigate Fines.

By stat. 54 *G.* 3. *c.* 171. § 1. After reciting the acts of 27 *G.* 3. *c.* 32. and 51 *G.* 3. *c.* 96., and that "it is expedient that the commissioners of H. M.'s treasury should be empowered to restore, remit, or mitigate any forfeiture, fine, or penalty incurred under any law relating to the revenue of customs or excise, or navigation and trade, either before or after the same shall have been adjudged in any court of law, or before any commissioners of excise or justices of the peace, it is enacted, that it shall be lawful for the

54 G.3. c.171.

54 G.3. c.171.

Treasury empowered to restore seizures to the proprietors, and to mitigate and remit penalties incurred under the laws of customs and excise,

on such conditions as the treasury think fit.

commissioners of H. M.'s treasury, or any three of them, by order under their hands, to direct any ships or goods seized as forfeited by virtue of any act relating to the revenue of customs or excise, or for the regulation of trade and navigation, to be restored to the proprietor on the conditions mentioned in such order; and also to mitigate or remit any penalty or forfeiture which shall have been incurred, or any part of any such fine or penalty, under these laws.

§ 2. In any case where the commissioners of the treasury shall exercise the powers hereby vested in them, such goods shall be restored, or fines, penalties, or forfeitures, or any parts thereof, remitted or mitigated, upon such conditions, as to costs or otherwise, as shall appear to them reasonable; and no person shall be entitled to the benefit of any such order, unless the conditions therein are complied with.

§ I. (y) Allowance to poor Persons confined for Debts or Penalties.

53 G.3. c.21. Allowance to poor persons confined under exchequer process.

By stat. 53 *G.* 3. *c.* 21. For the necessary subsistence of any poor person confined under exchequer process for recovery of duties or penalties by virtue of any act now in force, or hereafter to be made, relating to the customs or excise, or confined under *A body-warrant* issued by the commissioners of excise in *England*, or by justices of peace within *G. B.*, by virtue of any act now in force, or hereafter to be made, relating to the customs or excise, or confined under any writ of extent for debts due to H. M., sued for by order of the commissioners of customs or excise, or on suit upon bonds taken pursuant to orders in council, it shall be lawful for any four of the commissioners of customs or excise in *England*, or any three of them in *Scotland*, to cause an allowance not exceeding sevenpence halfpenny, and not less than fourpence halfpenny per day, to be made to any such poor person, out of any money in their hands arising from the duties of customs or excise.

Masters of vessels detaining certificates of ship's registry. See tit. Ships, Vol. V. stat. 42 *G.* 3. *c.* 61. § 20.

§ II. Of the Excise in general.

(*a*) *Office, Commissioners, and Collectors.*
[12 *C.* 2. *c.* 24.—15 *C.* 2. *c.* 11.—5 *W.* 3. *c.* 20.—11 *G.* 1. *c.* 30.—12 *G.* 1. *c.* 28.—23 *G.* 2. *c.* 26.]

(*b*) *Recovery of Penalties.—Power of Justices.—Summoning Witnesses, &c.—Proceedings on Trial of Seizures.*
[12 *C.* 2. *c.* 24.—7&8 *W.* 3. *c.* 30.—12 *G.* 1. *c.* 28.—9 *G.* 2. *c.* 35.—18 *G.* 2. *c.* 26.—24 *G.* 2. *c.* 40.—27 *G.* 2. *c.* 20.—32 *G.* 2. *c.* 17.—5 *G.* 3. *c.* 43.—23 *G.* 3. *c.* 70.—28 *G.* 3. *c.* 37.—49 *G.* 3. *c.* 81.—3 *G.* 4. *c.* 23.]

(*c*) *Offenders removing.*
[18 *G.* 2. *c.* 26.—5 *G.* 3. *c.* 43.—32 *G.* 3. *c.* 10.]

(*d*) *Mitigation of Penalties.*
[12 *C.* 2. *c.* 24.—57 *G.* 3. *c.* 87.]

(*e*) *Appeal.*
[12 *C.* 2. *c.* 24.—15 *C.* 2. *c.* 11.]

(*f*) *Protection of Officers.*
[23 *G.* 3. *c.* 70.]

(g) *Trial of Offences.—Proceedings, &c. by whose Order, &c.*
[19 *G.2. c.*34. — 46 *G.3. c.*112. —56 *G.3. c.*104. —5 *G.4. c.*94.]

(h) *Alehouse-keepers harbouring Offenders.*
[9 *G.2. c.*35.]

(i) *Concealing prohibited Goods, &c. — Seizures. — Utensils. — Deceiving Officers. — False Weights, &c.*
[11 *G.* 1. *c.*30. — 26 *G.* 3. *c.*77. — 28 *G.* 3. *c.* 37. — 42 *G.* 3. *c.*93. —49 *G.* 3. *c.*81. —57 *G.* 3. *c.*87.]

(k) *Restitution of Seizures in certain Cases.*
[47 *G.* 3. *sess.*2. *c* 30.]

(l) *Permits.*
[21 *G.*3. *c.*55.]

(m) *Constables to assist Officers.*
[11 *G.* 1. *c.*30.]

(n) *Obstructing Officers.*
[6 *G.* 1. *c.*21. — 9 *G.* 2. *c.*35. —42 *G.*3. *c.*38. —43 *G.* 3. *c.*81.]

(o) *Forging Debentures.*
[38 *G.*3. *c.*54. —41 *G.*3. (*U.K.*) *c.*91. —52 *G.*3. *c.*143.]

(p) *In the Entry of Premises, Places and Utensils shall be distinguished by Letters or Numbers.*
[58 *G.* 3. *c.*65.]

Excise, what.

The *Excise* is a tax laid upon the retailer or consumer of any commodity; it is called *Excise* from the *Dutch* word *Accise*, which signifies an assessment upon any commodity; others derive it from the word *Excisum* as a part of the profit cut off from the whole. *Gilb. Exch.* 252.

Original institution of the excise in 1643, with the appointment of commissioners.

This was begun on the 11th of *September* (a) 1643, by the long parliament; and eight commissioners of excise were appointed, and they were to choose their own officers, viz. their register, collectors, clerks, and other subordinate officers.

§ II. (a) Office, Commissioners, and Collectors.

12 C. 2. c. 24. Head office, and commissioners.

By stat. 12 *C.* 2. *c.* 24. § 46. and 5 *W.* 3. *c.* 20. § 16. One principal head office of excise shall be erected and continued in *London*, or within ten miles thereof, to which all other offices shall be subordinate and accountable; which said office shall be managed by such officers as shall be appointed by H. M., who, or any two of them, are hereby constituted commissioners and governors for the management of the receipt of the excise.

Sub-commissioners and other officers.

By stat. 12 *C.* 2. *c.* 24. § 48. All the places within the bills of mortality shall be under the immediate care and management of the said head office; and such and so many subordinate commis-

(a) The parliament's ordinance for the excise bears date *July* 22. 1643. It was laid upon liquors, grocery-wares, silks, linens, cloths, furs, and almost all other sorts of commodities, imported. That the reader may have a notion of it, it will be proper to mention some of the particulars. Every pound of tobacco, not of the *English* plantation, was to pay, over and above all customs, 4*s.*, and that of *English* plantation, 2*s.*; every tun of wine retailed, 6*l.*, and for private use, 3*l.*; *Malaga* raisins, one *farthing* per pound; currants, 1*d.*; loaf-sugar, 4*d.* per pound; cloth of gold and silver, 8*s.*, and tissue, 10*s.* a yard. Damask table-linen, 1*s.* a yard, &c. It is somewhat strange, that *Rushworth* has not inserted this curious ordinance in his *Collections*. 2 *Rapin's Hist.* 497. *note* 3.

12 C. 2. c. 24. sioners and sub-commissioners and other officers shall be appointed by H. M. in other places, as he shall think fit.

23 G. 2. c. 26. Office, when to be kept open. By stat. 23 *G.* 2. *c.* 26. § 12. The excise office, in all places where it shall be appointed, shall be kept open from eight in the morning till two in the afternoon.

49 G. 3. c. 66. Chief office. By stat. 49 *G.* 3. *c.* 66. § 2. The chief office of excise shall be kept open from eight of the clock in the morning until three of the clock in the afternoon.

15 C. 2. c. 11. Office in market towns. By stat. 15 *C.* 2. *c.* 11. § 10. The commissioners or sub-commissioners shall appoint under their hands and seals such person or persons as they shall think needful in each market town, to be there upon every market day, in some known and public place, for receiving entries and duties, and performing all other things touching the revenue of excise; and if such office shall not be so kept in each market town, the commissioners or others neglecting or refusing shall for every market day forfeit 10*l.*; half to H. M., and half to him that will inform and sue; and such person as shall come to such market town to make his entry or payment, and shall tender the same accordingly, and be able to prove such tender by oath of one witness, shall not be liable to any penalty or forfeiture for such weekly or monthly entries or payments, as should have been made or paid on such market day.

Collections, districts, and other divisions. The kingdom of *England* and *Wales* (exclusive of the bills of mortality) is divided into about fifty *collections* (*a*); some called by names of particular counties; others by the names of great towns, where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties. Every collection is subdivided into *districts*, within each of which there is a *supervisor;* and each district is parcelled into *out-rides* and *foot-walks*, within each of which there is a *gauger* or surveying officer. *Gilb. Exch.* Append. 297, 298.

12 C. 2. c. 24. Gaugers. By stat. 12 *C.* 2. *c.* 24. § 33. The commissioners or sub-commissioners in their respective circuits and divisions shall constitute under their hands and seals such and so many *gaugers* as they shall find needful.

Certificate for obtaining an order to be instructed in the excise. In order to which, he who would be made an excise officer must procure a certificate that he is above 21 and under 30 years of age; that he understands the four first rules of arithmetic; that he is of the communion of the church of *England;* how he has been employed, or what business he hath followed; that he is not incumbered with debts; whether single or married; and if married, how many children he has, for if he has above two he cannot (by the rules of the office) be admitted. *Gilb. Exch.* Append. 293.

Security to be proposed. He must also nominate two persons to be his sureties, and it must be certified that they are of sufficient ability, and that the said certificate is of his own hand-writing; such certificate, written by him, must be signed by the supervisor of excise where the party applying lives. *Gilb. Exch.* Append. 293.

Affidavit. At the bottom of the certificate must be his affidavit that neither he nor any one else to his knowledge hath directly or indirectly given or promised to give any treat, fee, gratuity, or reward for his obtaining or endeavouring to obtain an order for his being instructed. *Id.* 294.

Order for in- When an order for instructing is granted, it is directed to an

(*a*) Now (as I am informed) into about 56 Collections. *Ed.*

experienced officer, who receives such person as his pupil; and the like books as officers have being delivered to such pupil, he goes with and attends the officer, who instructs him and takes surveys, and in his own books makes the like entries as if he were an officer, until the instructor certifies that he is fully instructed. *Id.* struction, and certificate thereon.

After he is thus certified for, and until he is employed, he is called an *Expectant*, being to wait till a vacancy happens. *Id.* Expectant.

By stat. 12 *C.* 2. *c.* 24. § 47. No person shall be capable of intermeddling with any office relating to the excise, until he shall before two justices in the county where his employment shall be, or before a baron of the exchequer, take the oaths of allegiance and supremacy, together with this oath following: — 12 C.2. c.24. Officer's oath.

You shall swear to execute the office of —— truly and faithfully, without favour or affection, and shall from time to time true account make and deliver to such person or persons as H. M. shall appoint to receive the same, and shall take no fee or reward for the execution of the said office from any other person than from H. M., or those whom H. M. shall appoint in that behalf.

§ 48. The justices shall certify the taking of such oath to the next quarter sessions, there to be recorded.

By stat. 15 *C.* 2. *c.* 11. § 27. The officer shall also enter a certificate therof with the auditor for excise; and if any such person shall act before he shall have taken the said oaths, and entered his certificate with the auditor, he shall forfeit 50*l.* a month. 15 C.2. c.11.

He shall also, within six months after his admission to the office, take the oaths and subscribe the declaration against transubstantiation at the quarter sessions, in like manner as other persons admitted to offices. [*See* Oaths and Office, Vol. III.]

The business of the *Supervisor* is, to be continually surveying the houses and places of the persons within his district liable to duties; and to observe and see whether the officers duly make their surveys, and make due entries thereof in their books and in their specimen papers; and every supervisor is in his own book to enter what himself does each day and part thereof; and also to set down the behaviour, good or bad, the diligence or negligence of the several officers of his district; and at the end of every six weeks to draw out a diary of every day's business, and of the remarks made each day of the several officers in his district, and to transmit such diary at the end of every six weeks to the chief office. *Gilb. Exch.* Append. 303, 304. Officer's general duty. Supervisors to make diaries, and transmit them to the chief office.

Each commissioner takes and peruses a proportion of these diaries, and when he meets with any remarkable complaint against any officer, he communicates it to the rest; who, thereupon come to an agreement, either to *admonish*, *reprimand*, *reduce*, or *discharge*. For small faults, officers are admonished; for great ones, reprimanded; for greater, reduced; but for the greatest, they are discharged. The commissioner who peruses the diary, writes in the margin, *admonish* or *reprimand*, &c. as is agreed on by the Board. *Gilb. Exch.* App. 304. The duty and authority of the commissioners in reprimanding and punishing officers guilty of neglect.

These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who, in a book called the *reprimand-book*, places the admonitions, reprimands, &c. to each officer's account, and writes every offender word thereof; which reprimand-book is resorted to, upon discovering new faults; and if it be there found that the officer has before been admonished and reprimanded, so often that there are no hopes of his amending, he Business of the clerk of the diaries, with the form and use of the reprimand-book.

then is discharged. The said book is likewise resorted to when application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded. *Id.* 305.

The business of collectors.

The *collector's* business is, every six weeks, to go his rounds; and in the intervals of rounds, he is to be assisting in prosecuting offenders before justices; he is also to peruse the supervisor's diaries, and where he finds an officer complained of, is to examine him and the supervisor, and, having heard both, is in the margin to write his opinion of each fact; he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection. *Id.* 305, 306.

The manner of reducing officers for faults.

For faults, gaugers are *reduced* either to be only assistants, or from foot-walks to out-rides. Supervisors are reduced to be again only gaugers; and collectors are reduced to be supervisors. *Id.*

The manner of discharging and restoring officers.

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged, are never again restored, unless one of the discharges appears to have been occasioned upon a misrepresentation of the case. *Id.* 307.

12 G.1. c.28. Officer not to be a dealer.

By stat. 12 *G.* 1. *c.* 28. § 7. If any officer of the excise or customs shall deal in coffee, tea, brandy, or other exciseable liquors, he shall be incapable to hold any office in the revenue, and forfeit 50*l.*

15 C.2. c.11. Officer taking a bribe.

By stat. 15 *C.*2. *c.* 11. § 16. No sworn gauger, or other officer, shall take any bribe for any matter relating to the excise, on pain of 10*l.*

And a further penalty upon such officer is inflicted in divers instances hereinafter mentioned.

11 G.1. c.30.

By stat. 11 *G.* 1. *c.* 30. § 40. If any person liable to the duties of excise, or any other duties under the management of the commissioners of excise, shall give or offer to any officer of the said duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it, he shall forfeit 500*l.*

5 W.3. c.20. Officer meddling in elections.

By stat. 5 *W.* 3. *c.* 20. § 48. No collector, supervisor, gauger, or other person concerned in charging, collecting, levying, or managing the duties of excise, or any part thereof, shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote for the choice of a member of parliament, on pain of 100*l.*, half to the poor, and half to him who shall sue in the courts at *Westminster*; and moreover he shall be incapable to hold any office of trust under the king.

§ II. (*b*) Recovery of Penalties—Power of Justices—Summoning Witnesses, &c.—Proceedings on Trial of Seizures.

24 G.2. c.40. Penalties by the excise laws.

In stat. 24 *G.* 2. *c.* 40. There is a general clause, (§ 29.) which has a controlling influence on all that hereafter follows in this large title; which is this: "all fines, penalties, and forfeitures imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways, means, and methods as any fine, penalty, or forfeiture is or may be re-

covered or mitigated by any law or laws of excise, (not otherwise directed by this act,) or by action of debt, bill, plaint, or information in any of H. M.'s courts of record at *Westminster*, or in the court of exchequer in *Scotland;* and one moiety of every such fine, penalty, or forfeiture shall be to H. M., his heirs and successors, and the other moiety to him or them who shall discover, inform, or sue for the same. **24 G.2. c.40.** **Power of recovering, mitigating, &c.**

By stat. 12 *C.*2. *c.*24. § 45. All forfeitures and offences against this act committed within the limits of the chief office in *London*, shall be determined by the commissioners (or any three of them, 1 *G.*2. *st.*2. *c.*13. § 4, 5.) or, in case of appeals, by the commissioners of appeals; in all other cities, counties, or places they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed; and in case of neglect or refusal of such justices by the space of fourteen days next after complaint made, and notice thereof given to the offender, then the sub-commissioners may hear and determine the same; and if the party find himself aggrieved by the judgment given by the said sub-commissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final; which said commissioners for appeals, and chief commissioners for excise, and all justices of the peace and sub-commissioners aforesaid are required upon any complaint or information (F) exhibited and brought of any such forfeiture made, or offence committed, to summon (G) the party accused, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof, either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment or sentence (H), and to issue warrants (I) under their hands for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in not less than four, nor more than eight days [27 *G.* 2. *c.*20. § 1.]; and for want of sufficient distress, to imprison (K) the party offending till satisfaction be made. [Jurisdiction extended to where the offender shall be found, by stat. 18 *G.*2. *c.*26. § 13. *post.* 62.] **12 C.2. c.24.** **By commissioners.** **By two justices.** **By sub-commissioners.** **Levying forfeitures.**

And by stat. 49 *G.*3. *c.*81. § 9. "All fines, penalties, and forfeitures, imposed by this or any other act or acts of parliament now in force, or hereafter to be made, relating to the duties of excise, shall and may be sued for, levied, recovered, and mitigated by such ways, means, and methods, as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise (not otherwise specially directed by this or any such other act or acts of parliament), or by any action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, or in the court of exchequer in *Scotland;* and the one moiety of every such fine, penalty, or forfeiture, shall be to H. M., his heirs and successors, and the other moiety to him or them who shall discover, inform, or sue for the same." **49 G.3. c.81.** **Penalties, &c. how to be levied.**

Residing near] Where the *next* justices are empowered to proceed in any matter, they and no other ought in such case to act; but where it is only directed that the justices residing *near* shall do such a thing, those words are not restrictive, but only directory, and any justices, although not the *next* justices, may proceed therein. 1 *Shaw.* Excise, 330. **Not necessary to be the two next justices.**

But where the act says, that *any two justices residing near* to the

12 C.2. c.24. place where the forfeiture shall be made, or the offence committed, shall hear and determine the matter, it doth not intend that the justices of a county at large dwelling near to a town corporate, which hath justices of its own, and an exclusive charter, shall have power to intermeddle with regard to offences committed within such town corporate; but only to vest the jurisdiction in justices of counties, cities, and places, with respect to their local jurisdictions within such places. *Talbot* v. *Hubble*, 2 *Str.* 1154. See also *Blankley* v. *Winstanley*, 3 *T. R.* 279., and *Rex* v. *Sainsbury*, 4 *T. R.* 456.

Information. *Upon any complaint or information exhibited*] By these words it is not necessary that the information be exhibited *in writing*. (*a*) But if it be a verbal information, the justices ought to make a record thereof, and of the time and place when and where exhibited, which must be expressed in the present and not in the time past: but to save the justices that trouble, it is usual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying such information, leaving therein blanks for the names of the justices, and the day and month and year and place when and where laid; and when those blanks are filled up by direction or consent of the justices, then it becomes a record made by them. The mentioning the place where the information is laid, is, that it may appear that the prosecution was in the proper county; and therefore though it may happen that for laying the information, the prosecutor may be obliged to attend one justice in one town (*b*), and another justice in another town, it must not be mentioned that the information was laid at both towns, for that would be absurd; but in such cases it is usual to express that the information is laid at the town where the hearing is intended to be. 1 *Shaw*. Excise, 342, 343.

32 G.2. c.17. Service of Summons. *Summon the party accused*] By stat. 32 *G.2. c.* 17. § 1. Where the commissioners of excise and justices of peace have respectively issued out any summons for the appearance of persons offending against or for forfeitures incurred by the laws of excise, or other laws for collecting and securing the duties under the management of the commissioners of excise, which hath been left at the house or usual place of residence, or with the wife, child, or menial servant of such persons, every such summons so left shall be a good and sufficient summons, and as legal and effectual a notice as if the same had been delivered to the proper hands of such persons to whom the same was by name directed.

§ 2. And in all cases relating to the excise, or to any of the duties under the management of the commissioners of excise, (except where particular provisions are made for summoning offenders, or for condemning of seizures made from persons unknown,) leaving such summons at the house, workhouse, warehouse, shop, cellar, vault, or usual place of residence of such person, directed to him by his right or assumed name, shall be as effectual as if personally delivered to him, and as if directed to him by his proper name.

7&8 W.3. c.30. Summoning witnesses. By stat. 7 & 8 *W.* 3. *c.* 30. § 24. It shall be lawful for the commissioners of excise and justices of peace respectively, upon any information exhibited before them for any offence committed

(*a*) See title Conviction.

(*b*) By stat. 3 G.4. c.23. § 2. One justice is competent to receive the information and issue the summons.

against the laws of excise, to summon (L) any person (other than the party accused) to appear before them at a certain day, time, and place, to be inserted in such summons, and to give evidence for the discovery of the truth of the matter in controversy; and such in case of neglect or refusal to appear, or if upon appearance person shall refuse to give evidence when required, he shall forfeit 10*l.* 7&8 W. 3. c. 30.

Proceed to the examination of the fact] And by stat. 9 *G.* 2. *c.* 35. § 34. it is enacted, that in trials of seizure the seizure shall be taken to have been made as in the information set forth, and the judges and justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. [*Ante*, p. 46, 47.] Justices to proceed on the merits.

By stat. 12 *G.* 1. *c.* 28. § 16. One or more justices shall have power to administer an oath to any person skilled in the value of goods, vessels, or carriages, and cattle mentioned to have been seized in the information exhibited before the justices to view the same, and make return of the species, quantity, quality, and value; and after condemnation the same shall be sold where and when the commissioners shall think proper. 12 G. 1. c. 28. Sworn values.

By stats. 6 *G.* 1. *c.* 21. § 24., and 11 *G.* 1. c. 30. § 32. If upon any trial in matters of customs or excise, any question shall arise concerning the keeping of any office of excise, or concerning any person's being an officer, proof shall be admitted of the actual keeping of such office, or of such person's actually exercising such office, without proving or producing the commission. 6 G. 1. c. 21. 11 G. 1. c. 30. Officer on trial need not produce his commission.

By stat. 12 *G.* 1. *c.* 28. § 8. If any foreign goods shall be seized, and any dispute shall arise whether the excise or other inland duties shall have been paid, or the goods legally condemned, or compounded for, or condemned, or concerning the place whence such goods were brought, the proof shall lie on the owner or claimer, and not on the officer. And by stat. 23 *G.* 3. *c.* 70. § 35. if any goods liable to duties of excise or inland duties shall be seized, or if any action shall be brought by the owner or claimer of any such goods against any officer of excise or his assistant, proof of payment of the duties shall lie upon the owner or claimer, and not on the person who seized the same, or against whom the action shall be brought. [*Ante*, p. 48.] 12 G. 1. c. 28. Proof to lie on the owner. 23 G. 3. c. 70.

If the officer prove a condemnation in the *exchequer*, this is conclusive evidence that the property is vested in the King, and a complete bar to an action. *Scott* v. *Shearman*, 2 *Black. Rep.* 977. *Per Ld. Kenyon Ch. J. in Geyer* v. *Aguilar*, 7 *T. R.* 696. *Peake's Ev.* 434. 1 *Phill. Ev.* 334. Condemnation in the exchequer.

Whether a condemnation by the commissioners of excise ought to have the same conclusive operation as a judgment of condemnation in the court of exchequer has not been clearly settled. In the case of *Henshaw* v. *Pleasance et al.* 2 *Black. Rep.* 1174., which was an action of trespass, brought against revenue officers, for seizing goods supposed to have been irregularly lodged and concealed, a sentence of condemnation by commissioners of excise was offered as conclusive evidence against the plaintiff; but Mr. Justice *Blackstone*, who tried the cause, refused to admit it to that extent, directing the jury that such a sentence was evidence, but not, like a condemnation in the exchequer, conclusive. On a motion afterwards for a new trial, upon this supposed misdirection, the court of C. P. confirmed the judge's opinion. "The reasons and authorities," it was said, "relied on in the case of *Scott* v. *Shearman*, and other cases of the same kind, extend only to condemnations in the exchequer, which is the king's supreme Condemnation by commissioners of excise.

12 G. 1. c. 28. court of revenue, but not to the inferior jurisdiction of the boards of excise and customs. 1 *Phill. Ev.* 335.

Judgment. *Give judgment*] Although it hath been said that whatever is recorded by the justices of their order, ought to be expressed in words of the present time and tense, yet that doth not make it necessary, nor is it indeed practicable, that all that is to be so entered should actually be entered at the instant of time when such judgment is given; for such entering the whole at that time would hinder the despatch of business and delay the hearing of causes, and therefore may be done at any convenient time after: which if it be agreeable with and according to such short minutes or notes as are then taken by such justices, it will be as authentic as if it had been entered at the instant of time in which such order was made or judgment was given. 1 *Shaw.* Excise, 351. See *R.* v. *Barker*, 1 *East*, 184. Vol. I. tit. Conviction, *R.* v. *Hall*, 1 *T. R.* 320. 2 *Lord Raym.* 1376. 2 *Stra.* 608. *Roberts's case.*

Warrant to distrain. *And to issue warrants under their hands*] It is here only directed that the warrant shall be under the *hands* of the justices: it need not be *under seal* also. A warrant does not *ex vi termini* imply an instrument under seal; it signifies no more than an *authority*. *Padfield* v. *Cabell*, *Will. Rep.* 411.

In many acts of parliament indeed it is expressly directed that the warrant shall be under hand and seal; and it is safe and prudent at least that all warrants should be both *signed* and *sealed*. See tit. Warrant, Vol. V.

18 G. 2. c. 26. 5 G. 3. c. 43. Jurisdiction extended to where the offender shall be found. *For levying the same on the goods and chattels of the offender*] And in case where the offender shall remove out of the jurisdiction, it is enacted by stat. 18 *G.* 2. *c.* 26. § 13. and 5 *G.* 3. *c.* 43. § 26., that the commissioners and justices respectively, within whose jurisdiction any person charged by any act concerning the duties of excise, or any other duties under the management of the commissioners of excise, or who hath committed any offence against any of the said acts, shall be found, may summon, hear, adjudge, and determine, and issue any process or warrant, in the same manner as before they might have done in case of such offences committed within their jurisdiction, (See 32 *G.* 3. *c.* 10. § 1. *infra* 64.); and if they shall, upon any judgment given by them, issue a warrant of distress, and the person authorised to execute the warrant shall make a return thereto, that no sufficient distress can be found, it shall be lawful for the said commissioners and justices respectively, within whose jurisdiction the party shall at any time be found, against whom such warrant shall have been issued, upon producing to them such warrant and return thereof, to commit such offender to the next county gaol till satisfaction be made.

28 G. 3. c. 37. All exciseable goods are liable to be seized for arrears of duty, or penalties, wherever found. By stat. 28 *G.* 3. *c.* 37. § 21. All goods in respect whereof any duty of excise is imposed, and all materials, preparations, utensils, and vessels in the custody of the maker or manufacturer thereof, or of any person to his use or in trust for him, shall be liable to and chargeable with all duties in arrear in respect of any such goods; and shall also be subject to all fines, penalties, and forfeitures incurred by such maker, &c. for any offence against any act relating to the duties on such or the like goods; and it shall be lawful in all such cases to levy such fines, duties, and penalties, and use such proceedings as may lawfully be done in relation to such goods, in case the debtor or offender were the true lawful owner.

Or person for his use or in trust for him] In the case of *Austin* and another, assignees of *Dormer* a bankrupt, v. *Whitehead* and

others, 6 *T. R.* 436., it was determined that if a soapmaker having incurred a forfeiture for concealing soap contrary to 1 *G. c.*36. §2. become bankrupt, and a provisional assignment of his estate be made, after which the soap is condemned and the bankrupt convicted, and thereupon a warrant issues to levy the penalty *on his goods generally*, such a warrant is bad, and cannot justify a seizure of the soap in the hands of the assignees. And Ld. *Kenyon* C. J. said (*inter alia*), that even if no bankruptcy had intervened in this case, this warrant could not have been supported, because it directs a seizure of the goods of *Dormer* generally, whereas the excise laws only give a lien on those goods that are liable to the duties, and the materials and utensils for making the same. 12 C.2. c.24.

And to cause sale to be made thereof if not redeemed in fourteen days] But by stat. 27 *G.*2. *c.* 20. § 1. the justices may not order the distress to be detained more than eight days, nor less than four.

For want of sufficient distress] Mr. *Shaw* and Mr. *Barlow* are of opinion that where there are some goods, but not sufficient for satisfying the judgment, yet those goods may be applied for that purpose so far as they shall extend, and the defendant shall be imprisoned for the residue; which may seem hard sometimes, when the defendant shall perhaps satisfy nearly the whole sum, and moreover be imprisoned as much as if he had paid nothing; and it hath been adjudged in other cases, that a man shall not first pay part, and then be imprisoned for the residue, but shall either pay the whole or be imprisoned for the whole; but perhaps the distinction may be this: where there is a limited time of imprisonment, as for instance three months, there the defendant shall not pay part, and then be imprisoned the whole three months, which would be to punish him both ways; but where the imprisonment is till the penalty shall be paid, there the payment of the penalty is the thing chiefly regarded, and the imprisonment is not intended as a punishment, but as a mean to compel the payment of the penalty; and if part of it is paid already, the enlargement may come the sooner, by payment of the residue. 12 C.2. c.24. **Want of sufficient distress.**

Imprison the party till satisfaction be made] But before any warrant can be made to arrest and imprison the person of the defendant, there must be first a warrant to seize the utensils in custody of such offender and the offender's goods; and that warrant must be returned; all which must be done before any warrant can be regularly made to arrest and imprison the defendant's person. Which method ought to be observed, though perhaps it may be well known by, or sufficiently proved before the justices, that all the utensils and all the defendant's goods are carried off; for the law being in all cases very tender of depriving men of their liberty, it is necessary that all possible means should be used to levy the money on such goods, before the person of the defendant be imprisoned. But if a warrant to seize the utensils and the goods be made and delivered to an officer to be executed, and if such officer having made diligent search cannot find any such, then a warrant may be made to arrest and imprison the person of the defendant. But then there ought to be a duplicate made of such warrant; because the keeper of the prison cannot regularly receive the offender without a warrant, and the officer ought also to have and keep a warrant for his own justification, 1 *Shaw*. Exc. 363. [See stat. 53 *G.*3. *c.*21. For allowance to poor persons confined under exchequer process, *ante*, p. 54.] **Imprisonment.**

§ II. (*c*) Offenders removing.

32 G.3. c.10. Offenders removing out of the jurisdiction where they were convicted.

By stat. 32 *G.*3. *c.*10. § 1. Where any person against whom any warrant of commitment in execution, commonly called a *body warrant*, shall, by any three commissioners of excise, or by any justice, under any act relating to duties of excise, be issued, shall escape, go into, reside, or be in any other county, riding, division, city, liberty, town, or place, out of the jurisdiction of the commissioners, &c. granting such warrant, any three commissioners or a justice of the peace where such person shall so be, on proof being made on oath of the hand-writing of such commissioners or justice granting such warrant, may indorse the same, which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute the same within such jurisdiction, and to convey such offender before the commissioners or justice who indorsed the same, or some other justice of the county, &c. where such warrant was indorsed; who may, by indorsement upon such warrant, commit such offender to the common gaol or house of correction of the county, riding, or place where such warrant shall be executed, according to the exigency of such warrant, there to remain until delivered by due course of law.

§ 2. And no action shall be brought against any person who shall indorse such warrant by reason thereof; but any person may bring his action against the commissioners or justice who originally granted such warrant, in the same manner as if this act had not been made. See 18 *G.*2. *c.*26. § 13., 5 *G.*3. *c.*43. § 26, *ante*, p. 62.

§ II. (*d*) Mitigation of Penalties.

12 C.2. c.24. Mitigation.

By stat. 12 *C.*2. *c.*24. § 46. the justices, commissioners, or sub-commissioners respectively where they shall see cause, may mitigate, compound, or lessen the forfeiture, penalty, or fine, so as the same be not made less than double the value of the duty of excise which ought to have been paid, besides the reasonable cost and charges of such officers or others as were employed therein, to be to them allowed by the said justices. [Vide *ante*, p. 49.]

Penalties of treble the value of the goods, how to be adjusted.

By stat. 57 *G.*3. *c.*87. § 8. Wherever by any law now in force relating to the customs of excise, a penalty of treble the value of the goods is imposed upon any offender, such offender shall forfeit for every such offence the sum of 100*l.* or treble the value of the goods, to be estimated according to and at the rate and price, which the best goods, wares, merchandizes, and commodities of the like sorts, kinds, and denominations, and for which the duty or duties thereon have been paid, were sold at the time of such seizure, at the election of H. M.'s attorney general, or the person or persons who shall sue or prosecute for the same; and no such penalty shall be mitigated by any justice or justices below one fourth part thereof.

Mitigate] But it is not necessary in the mitigation to mention or distinguish so much for the offence, and so much for the charges; after the justices have agreed what sums to allow for the charges, the best way will be to add those two sums together, and make their mitigation to such sum as both, when added together, amount unto; as suppose the justices intend that the defendant shall pay 10*l.* for the offence, and 40*s.* for the charges, the best way will be

to make their mitigation to 12*l.* without particularly mentioning that 10*l.* thereof is for the offence, and that the 40*s.* is for the charges; for in all cases it is wrong to insert in judgments more words or particulars than are necessary; and it is more particularly wrong in these cases, because mentioning such unnecessary particulars may give a handle for cavils and disputes. *Shaw*, Excise, 352.

§ II. (e) Appeal.

There is no appeal directed in stat. 12 *C.* 2. *c.* 24. § 45. from judgments given by justices of the peace; for whereas it is enacted, in the said statute, that *if the party find himself aggrieved by the judgment given by the sub-commissioners, he may appeal to the next quarter sessions*, these words, not being general, or such as may be applied equally as well to the judgments given by the justices as to judgments given by sub-commissioners, they must be understood as limited and restrained to such judgments only as are given by sub-commissioners, in whom the parliament (it seems) did not so entirely confide as in the justices, but have made the afore-mentioned distinction between the judgment of the one and of the other, which must be observed and pursued; and therefore, generally, there lies no appeal to the quarter sessions from the judgment given *by the justices*, in matters relating to the excise. *Shaw*, Excise, 364, 365. 12 C. 2. c. 24. Appeal. Generally no appeal lies.

In the case of *R.* v. *Justices of Surrey*, 2 *T. R.* 504. it was determined that no appeal lies to the sessions from a conviction by two justices for an offence under 25 *G.* 3. *c.* 72. § 9. for printing cotton before it was measured and marked by the proper officer of excise, according to the directions of the act; notwithstanding the act contains a general clause of reference to all former excise laws, and incorporates all the powers and provisions of 12 *C.* 2. *c.* 24. and of all other laws relating to the excise of inland duties under the management of the commissioners of excise, for the managing, mitigating, and adjudging the duties or penalties granted by this act. And the party does not, by this construction, lose the benefit of the power of mitigation; for the two justices will have the power of mitigating whether the appeal lie or not.

Nevertheless, in some particular instances, such power is given by subsequent statutes; which will be mentioned under the special heads in this title hereafter following.

By stat. 15 *C.* 2. *c.* 11. § 19. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or sub-commissioners and given security to the commissioners of appeal or justice of the peace, where the cause is to be finally adjudged, for such fine, forfeiture, and penalty as was adjudged against him; and if upon appeal the judgment be reversed, they shall restore the duty so deposited, or so much thereof as shall be adjudged on the appeal, and the party originally prosecuting shall pay double costs; but if the first judgment be affirmed, the party appealing shall pay the like costs to the commissioners. 15 C. 2. c. 11.

By § 22. All differences, appeals, and complaints about the excise shall be heard in their proper county, and not elsewhere.

§ 26. And appeals within *London* and the limits thereof shall be within two months after the first judgment, and notice thereof

given or left at the dwelling-house of the party; in all other places in four months, and not otherwise.

§ II. (*f*) Protection of Officers.

23 G.3. c. 70. Actions brought against the officers.

By stat. 23 *G*. 3. *c*. 70. § 29. for preventing vexatious suits against the officers of excise and their assistants; if any information or suit be commenced and brought to trial, on account of the seizure of any goods, or of any vessel, boat, horse, or other cattle, or of any carriage used in removing or carrying the same, wherein a verdict shall be found for the claimer thereof, and it shall appear to the judge that there was a probable cause of seizure, he shall certify the same upon the record; and in such case the claimant shall not be entitled to any costs of suit, nor shall the person who seized the same be liable to any action, indictment, or other suit or prosecution on account of such seizure; and if any action, indictment, or prosecution shall be commenced and brought to trial against any person on account of such seizure, wherein a verdict shall be given against the defendant, and the judge shall certify on the record that there was a probable cause of seizure, the plaintiff, besides the thing so seized or the value thereof, shall not be entitled to above 2*d*. damages, nor to any costs of suit, nor shall the defendant be fined above 1*s*.

Notice.

§ 30. And no writ or process shall be sued out against, nor a copy of any process served upon, any officer of excise or his assistant for any thing done in the execution of his office, until one calendar month's notice in writing shall have been delivered to him, or left at his usual place of abode, by the attorney or agent for the party who intends to sue out such writ, &c.; in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the said attorney or agent: and a fee of 20*s*. and no more shall be paid for preparing and serving such notice.

Until one calendar month's notice.] The day on which the notice is given is included in the reckoning, and therefore if the notice be given on the 28th *April*, the writ may be sued out on the 28th *May*. *Castle et al.* v. *Burditt et al.* 3 *T. R.* 623.

An excise officer is entitled to notice for an act not warranted by his official capacity, if done *bonâ fide* in the supposed execution of his duty, such as the assaulting an innocent person, whom he suspects to be a smuggler, employed in running goods. *Daniel* v. *Wilson*, 5 *T. R.* 1.

Extra exciseman.

It seems also that an extra exciseman, being considered an excise officer in every respect, except that he is not appointed by the board of excise by warrant or deputation, is entitled to notice for any thing done in pursuance of the excise laws; or at least that he is entitled to it, as a person acting under a regular excise officer in making search by his directions, though such officer be not present. *Clements and Ux.* v. *Keen*, 2 *Smith's Rep.* 220.

23 G.3. c.70.

By stat. 23 *G*.3. *c*.70. § 31. The officer, or his assistant, may at any time within such month, tender amends to the party complaining, or to his agent or attorney; and if not accepted, he may plead such tender in bar of the action, together with the plea of Not Guilty, and any other plea with leave of the court: and, if upon issue

joined, the jury shall find the tender to have been sufficient, they shall give a verdict for the defendant: and in such case, or in case the plaintiff shall become nonsuited, or discontinue his action, or judgment shall be given for the defendant upon demurrer, the defendant shall be entitled to the like costs as if he had pleaded the general issue only; and if the jury find that no amends or not sufficient were tendered, and also against the defendant on such other pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper, with costs of suit. 23 G.3. c.70.

§ 33. If he shall neglect to tender amends, or shall have tendered insufficient before the action brought, he may by leave of the court, at any time before issue joined, pay into court such sum as he shall see fit.

§ 32. The plaintiff shall not be permitted to produce any evidence of the cause of action, except such as shall be contained in the notice; nor shall recover, excepting he prove notice given.

§ 34. And if an action or suit shall be brought against any officer of excise or his assistant, for any thing done in the execution of his office, it shall be brought within three months next after the cause of action shall arise, and not afterwards; and shall be laid in the proper county; and the defendant may plead the general issue, and give the special matter in evidence; and if the plaintiff shall be nonsuited or discontinue, or if upon verdict or demurrer judgment shall be given against him, the defendant shall recover treble costs.

§ II. (*g*) Trial of Offences.—Proceedings by whose Order, &c.

By stat. 19 *G.* 2. *c.* 34. § 5. Offences relating to the excise made felony by any act may be tried in any county; but the attainder shall work no corruption of blood, or forfeiture of lands. 19 G.2. c.34. Felonies where to be tried.

By stat. 46 *G.* 3. *c.* 112. Reciting, that whereas by the 26 *G.* 3. *c.* 77. § 13. it was enacted that no person should commence, prosecute, enter, or file any action, bill, plaint, or information in any of H. M.'s courts against any person for the recovery of any fine, penalty, or forfeiture made by any act relating to the customs or excise, unless in the name of the attorney-general, or of some officer or officers of the customs or excise; and if any action, &c. were commenced, &c. in any other name, the same should be void, and the court in which such action, &c. was commenced, &c. should not suffer any proceedings to be had thereon; it is enacted, that the same rules should extend to all proceedings in respect of any such fine, &c. incurred under any act relating to excise, before the commissioners of excise, or before any justice of peace. See *ante*, 49. 46 G.3. c.112. In whose name proceedings shall be.

By § 3. Any person who shall be convicted of wilfully taking a false oath in any of the cases in which an oath is by any act relating to the duties of excise directed or required to be taken, shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury. Perjury.

Stat. 56 *G.* 3. *c.* 104. § 15. It shall not be lawful for any person to commence or prosecute, or cause to be commenced or prosecuted, any action or information for the recovery of any fine, penalty, or forfeiture incurred by virtue of any act now in force, or hereafter to be made, relating to the customs or excise, or to issue, or cause 56 G.3. c.104.

56 G.3. c.104. to be issued, any writ of appraisement for the condemnation of any ship, boat, or vessel, or any goods seized as forfeited by virtue of any such acts, unless the same be commenced, prosecuted, or issued, by order of the commissioners of customs or excise, or by or in the name of H. M.'s attorney-general; and if any action, information, or writ of appraisement is commenced, prosecuted, or issued, except upon such order, or by or in the name of H. M.'s attorney-general, the same, and all proceedings thereupon, shall be void, and the court or justices of peace where or before whom such action, &c. shall be commenced, prosecuted, or issued, shall not permit any proceedings to be had thereupon.

5 G.4. c.94. And now by stat. 5 *G.*4. *c.*94. intituled, "An act to allow the averment of the order for prosecution by commissioners of customs or excise to be sufficient proof of the order having been made." After reciting 56 *G.*3. *c.*104. § 15., and that offenders against the laws relating to customs and excise respectively, have escaped punishment, and difficulties have occurred in the condemnation of goods and chattels forfeited under the said laws, by reason of the necessity of giving or adducing legal evidence, in cases where proceedings had been or were about to be commenced against them, for offences against such laws, or the condemnation of goods and chattels forfeited under the same laws, by order of the commissioners of customs or excise, that such order had been actually made and issued by such commissioners respectively: it is enacted, that the averment of the fact in the information, complaint, prosecution, or proceeding, for the recovery of any fine, penalty, or forfeiture incurred under any act or acts now in force, or which shall hereafter be made, relating to customs or excise, or for the condemnation of any ship or ships, boat or boats, or other vessel or vessels, or any horse or horses, cart or carts, or any other carriage or carriages, or any other goods soever, seized as forfeited, or forfeited under any such act or acts, that such information or complaint, or prosecution, or other proceeding is commenced by order of the said commissioners respectively, shall be sufficient evidence in and throughout the U. K., that such prosecution was commenced, &c. by order of the said commissioners of customs or excise respectively, without any other evidence of the fact that the said commissioners had ordered such prosecution, &c. to be commenced, &c., unless by other positive evidence the contrary shall be made to appear; any thing in the said recited act to the contrary thereof notwithstanding.

Averment of the fact in the information or proceeding for the recovery of any fine relating to the customs or excise shall be sufficient evidence that the proceeding was commenced by order of the commissioners.

§ II. (*h*) Alehouse-keepers harbouring Offenders.

9 G.2. c.35. Alehouse keepers harbouring offenders.

By stat. 9 *G.* 2. *c.* 35. § 30, 31. Any alehouse-keeper knowingly receiving or harbouring an absconded person, against whom a process of arrest hath issued, and the sheriff has returned *non est inventus*, for having beat, abused, or obstructed any customs or excise officer in execution of his office, or for any offence against the laws of excise, or of the customs, or knowingly harbouring, &c. any person who having been in prison for any such offence has escaped, or who has been convicted for the same, and shall flee from justice after six days notice of such absconding in two successive gazettes, and by writing fixed on the door of the parish church where he last dwelt, shall forfeit 100*l.* and have no licence for the future.

§ II. (*i*) Concealing prohibited Goods, &c.—Seizures.—Utensils.—Deceiving Officers.—False Weights, &c.

By stat. 11 *G*. 1. *c*. 30. § 16. If any person shall knowingly conceal, or suffer to be concealed, any prohibited or run goods liable to the duties of excise and inland duties, he shall (whether he claim any interest in them or not) forfeit the same, and treble value, (or 100*l*., by 57 *G*. 3. *c*. 87. § 8.) 11 G. 1. c. 30. Concealing prohibited or run exciseable goods.

And by stat. 42 *G*. 3. *c*. 93. § 17. Moreover, in case any of the goods, in respect whereof any duty of excise is imposed, shall be fraudulently concealed with intent to defraud the revenue, such goods shall be forfeited, together with all packages containing the same, and shall be seized by any officer of excise: and if any such officer shall suspect that any such goods shall be concealed in any place in *London* or *Westminster*, or within the limits of the chief office of excise in *London*, upon oath by such officer before the commissioners, or any two or more of them; or if such place be in any other part of *G. B.*, on oath as aforesaid before one justice for the county, &c. or place, where such officer shall suspect the same to be concealed, setting forth the ground of his suspicion; then the said commissioners, or any two of them, or the said justice may, if they judge it reasonable, by special warrant under hand and seal, authorise such officer by day or night, (but if in the night, in the presence of a constable or other peace officer,) to enter into every such place, and to seize all such goods so forfeited with their packages; and every such peace officer is, on request by such officer of excise, to go along with him and be present at the execution of such warrant; and if any person shall obstruct any such officer so authorised, or any one acting in their aid in executing such warrant, he shall forfeit 100*l*. 42 G. 3. c. 93. Concealing excise goods. Officers may enter suspected places. Penalty on obstructing.

§ 18. And where any goods are forfeited under any of the excise laws, all the moveable casks or other packages containing the same, and also every vessel, boat, cart, carriage, and all cattle used in the removal thereof shall be forfeited, and the same, together with such goods, may be seized by any officer of excise. When goods are forfeited, the packages, carriage, and cattle are also forfeited.

By stat. 49 *G*. 3. *c*. 81. § 8. Where any vessels would, if found, be liable to forfeiture for want of entry having been made, or notice given thereof, or for being private or concealed, all the utensils used or employed, or fit or proper to be used or employed, in the manufacture of any exciseable commodity in any private or unentered room or place where any such vessel shall be found, or have been used, shall be forfeited; and all such utensils may be seized by any officer of excise. 49 G. 3. c. 81. Utensils.

By stat. 26 *G*. 3. *c*. 77. § 8. If any trader subject to the survey of any officer of excise, and who is required to keep just scales and weights, shall before or after or in weighing his stock, put or suffer to be put any other substance into the commodity so to be weighed, whereby such officer may be hindered or prevented from taking a just account thereof, or shall forcibly obstruct or hinder, or by any art, device, or contrivance, prevent or impede such officer in taking such account, he shall forfeit 100*l*. 26 G. 3. c. 77. Using art to deceive officers in taking the weight of stock.

And by stat. 28 *G*. 3. *c*. 37. § 15. All such traders who shall in 28 G. 3. c. 37.

28 G.3. c.37. — False scales and weights may be seized.

weighing their stock, make use of any false, unjust, or insufficient scales or weights, to the intent to defraud H. M. of the duties, shall forfeit the same, which may be seized by any officer of excise.

§ II. (*k*) Restitution of Seizures in certain Cases.

47 G.3. sess.2. c.30. Commissioners of excise may restore seizures upon such terms and conditions as they may deem proper.

By stat. 47 *G.*3. *sess.*2. *c.*30. § 19. It is enacted, that after the passing of this act, in case any goods or commodities whatsoever, or any ships, vessels, boats, horses, cattle, or carriages, shall be seized as forfeited, by virtue or in pursuance of any act or acts of parliament relating to the revenue of excise; it shall be lawful for the commissioners of excise in *England*, or the major part of them, on evidence given to their satisfaction, that the forfeiture arose without any design or intention of fraud in the proprietor or proprietors, claimant or claimants, and person or persons having the custody, care, or management, for the time being, of such goods, commodities, ships, vessels, boats, horses, cattle, or carriages, to order the same to be restored to such proprietor, &c. &c. in such manner, and on such terms and conditions, as under the circumstances of the case shall appear to the said commissioners to be reasonable, and as they shall think fit to direct; and if such proprietors, &c. &c. shall comply with the terms and conditions so prescribed, it shall not be lawful for such goods, &c. &c. to be proceeded against in any manner for the condemnation thereof; but if he shall not comply with the terms and conditions so prescribed, such goods, &c. &c. may and shall be proceeded against for the condemnation thereof as if this law had not been made. Provided always, that if such proprietor, &c. &c. shall accept the terms and conditions prescribed by the said commissioners, such proprietor, &c. &c. shall not, nor shall any of them have or be entitled to any recompence or damage, on account of the seizure or detention of such goods, &c. &c.

See also stat. 54 *G.* 3. *c.*171. § 1. ante.

§ II. (*l*) Permits.

21 G.3. c.55. Permit for removing exciseable goods.

By stat. 21 *G.*3. *c.*55. § 27, 28. The officers, in their permits for removing exciseable goods, shall express as well the time for which they shall be in force for removing such goods as the time within which they shall be received into the stock of the person to whom they are sent; and if not removed within the time limited (except in case of unavoidable accident); or, in default of such removing, if the permit shall not be returned to the officer who granted the same, the person out of whose stock they were to be removed, shall forfeit treble the value of the goods; and, if not received into stock within the time limited by the person to whom they were permitted to be sent, they shall be deemed goods removed without a permit.

II. (*m*) Constables to assist Officers.

11 G.1. c.30. Constable refusing to attend officers.

By stat. 11 *G.*1. *c.*30. § 31. If upon due request made by any officer of excise, to any constable, head-borough, or other ministerial officer of the peace, he shall refuse or neglect to go along with him, and be present at the doing of any thing, where his presence by the laws now in being, or hereafter to be made, shall be required, he shall forfeit 20*l.*, to be recovered, levied, or miti-

gated, as any penalty may be by any law of excise, or in any of the courts of record at *Westminster*, or in the court of exchequer in *Scotland*: one moiety whereof shall be to the king, and the other to him that shall sue or inform for the same. 11 G.1. c.30.

§ II. (n) Obstructing Officers.

By stat. 6 *G*.1. *c*.21. § 7. If any person shall oppose, molest, hinder, or obstruct any officer of excise in the due execution of the powers given him by any act relating to the duties of excise, he shall forfeit 10*l*. **6 G.1. c.21. Obstructing officer.**

And by stat. 9 *G*.2. *c*.35. § 26. Actions of assault upon any officer of excise may be tried in any county. **9 G.2. c.35.**

By stat. 42 *G*.3. *c*.38. § 35. If any person shall disturb or oppose any excise officer in the execution of the powers and authorities by this act granted, or any or either of them, except where other penalties are by the act provided, he shall forfeit 200*l*. And the same penalty is inflicted by 43 *G*.3. *c*.81. § 16. in relation to that act. **42 G.3. c.38.**

Further penalties are imposed by many acts for assaulting, resisting, opposing, molesting, obstructing, or hindering officers of excise in the due execution of their duty, which are inserted under their respective heads.

§ II. (o) Forging Debentures.

By stat. 41 *G*.3. (*U.K.*) *c*.91. § 5. If any person shall counterfeit or forge, or cause to be counterfeited or forged, any certificate authorised or required to be granted by any officer of excise, by virtue of any act in force relating to the duties of excise, or shall knowingly give any false certificate, or receive any false certificate, or alter or erase any certificate after the same shall have been granted by any officer of excise, or shall knowingly publish or make use of any certificate so counterfeited, forged, false, altered, or erased, every person so offending being thereof convicted, shall be adjudged guilty of felony, and be transported for seven years. **41 G.3. (U.K.) c.91. Forging debentures.**

By stat. 38 *G*.3. *c*.54. § 9. If any person shall counterfeit or forge, or cause to be counterfeited or forged, any debenture, in any case in which a debenture is, by any act relating to the duties of excise required to be granted, or knowingly make use of any counterfeited or forged debenture, every person so offending being thereof convicted, shall be deemed guilty of felony, and suffer death without benefit of clergy. **38 G.3. c.54.**

By stat. 52 *G*.3. *c*.143. § 10. If any person shall, with intent to defraud H. M., falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, &c., or willingly assist in falsely making, &c. any debenture, or any certificate for the payment or return of any money, or any part of any such debenture or certificate, or any signature thereon, in any case in which such debenture or certificate is by any act or acts of parliament relating to the duties of customs or excise required or directed to be given or granted; or shall wilfully, with such intent as aforesaid, utter, publish, or make use of any such debenture or certificate, or part thereof, so being wholly or in part falsely made, &c., he shall on conviction be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy. **52 G.3. c.143. Punishment for forging debentures for return of money from duties of customs or excise.**

§ II. (*p*) In the Entry of Premises, Places and Utensils shall be distinguished by Letters or Numbers.

58 G. 3. c. 65.

By stat. 58 *G*. 3. *c*. 65. § 7. Every person making and required to make entry of any building, place, or utensil, under any (*a*) law relating to the excise, for using the same in carrying on any trade or business subject to the survey of the officers of excise, shall in such entry distinguish and describe every such building, place, and utensil, by a particular letter or number, and paint the same in a large and distinct character upon some convenient and conspicuous part of the walls or doors of every such building or place, and upon some convenient and conspicuous part of every such utensil, and keep the same so painted, and when occasion may require, or when requested by the supervisor of the district, renew the same, so long as the entry thereof remains uncancelled; and wherever any such person shall use or employ in his entered buildings or places any fixed pipe, he shall, at making his entry, deliver with such entry a drawing or description, shewing or explaining the course, direction, construction, and use of such pipe, and every branch thereof, and of every cock thereon, with the places or utensils, from and to, or with which the same leads or communicates; and if any building, place, or utensil, shall be used by any such person, without being so described or distinguished, or without such letter or number being so painted and continued thereon, or any pipe be found without being so shewn or described, or different from such drawing or description, every such building, place, and utensil respectively shall be deemed unentered, and the person using the same shall forfeit, above all other penalties, 200*l*.

When pipes are used their course shall be described, &c.

III. Warehousing Goods.

The Editor is fully aware of the high importance and interest of this subject to the Merchants of *G. B.*, and to the collectors of its revenue; but he is also of opinion, that any detail of statutory regulations respecting it would, in this work, be misplaced; he thinks it sufficient to refer to these regulations, which appear to be contained and consolidated in the recent stat. 4 *G*. 4. *c*. 24.

IV. Of the several particulars under the management of the Commissioners of Customs and Excise.

It is proposed to omit all enumeration of the several duties imposed by the excise acts, since they are not only made up of many different charges, but are also every year varying in their amount and rate, so that such a description will probably be, within a few months, perfectly useless, and the space in this work occupied by it become a mere incumbrance. For the same reason the bounties and drawbacks will be no further noticed than as they may be connected with regulations which it is the duty of justices of the peace to enforce.

59 G. 3. c. 52. 4 G. 4 c. 69.

The last acts which relate to the duties of customs appear to be 59 *G*. 3. *c*. 52. 4 *G*. 4. *c*. 69. and 5 *G*. 4. *c*. 43. By those acts the former

(*a*) Though this regulation is given in an act relating to the duties on vinegar only, yet it seems so worded as to apply to all places whatsoever, in respect of which any other excise duties are necessary.

By Treasury Letter, 23d *November*, 1818, all proceedings are suspended for enforcing the observance of this clause, except by makers of and dealers in verjuice, vinegar, or acetous acid.

duties are repealed, and new duties substituted in lieu thereof; but those acts contain few or no regulations which concern a justice of the peace, and therefore the several customs' provisions remain in that respect, generally, as they were before those acts passed. And it is much to be desired that both in the customs and excise the several acts relating to them, and the penalties, forfeitures, rules, and directions, could be well arranged and brought within the compass of one act: at present they are so numerous, and enactments relating to the same case are dispersed through so many different statutes, that it is not within the power of any but a lawyer (and perhaps not excepting even him) to comprehend their true meaning.

The principal act by which duties of excise are now collected is the 43 *G.3. c.*69.; and by many subsequent statutes a great variety of new impositions have been added to those above alluded to.

It is proposed to arrange the matters relating to the excise under the following heads: *viz.*

(1.) *Ale, and beer.*
(2.) *Things sold by auction.*
(3.) *Bricks and tiles.*
(4.) *Candles.*
(5.) *Coffee, tea, chocolate, and cocoa-nuts.*
(6.) *Cider, perry, mum, metheglin, and mead.*
(7.) *Glass.*
(8.) *Hops.*
(9.) *Leather.*
(10.) *Linen cloth, silks, cottons, and callicoes.*
(11.) *Malt.*
(12.) *Paper.*
(13.) *Plate.*
(14.) *Salt.*
(15.) *Soap.*
(16.) *Spirituous liquors.*
(17.) *Starch, hair-powder, and stone blue.*
(18.) *Stone bottles.*
(19.) *Sweets.*
(20.) *Tobacco and snuff.*
(21.) *Vinegar, acetous acid, and verjuice.*
(22.) *Wine.*
(23.) *Wire.*

§ IV. (1.) *Ale and beer.* See title Alehouses, Vol. I.

[12 C. 2. c. 24.—15 C. 2. c. 11.—22 & 23 C. 2. c. 5.—1 W. sess. 1. c. 24.—7 & 8 W. c. 30.—8 & 9 W. c. 19.—12 & 13 W. c. 11.—12 G. 1. c. 28.—1 G. 3. c. 3.—2 G. 3. c. 14.—5 G. 3. c. 43.—6 G. 3. c. 14.—22 G. 3. c. 68.—24 G. 3. sess. 2. c. 41.—25 G. 3. c. 73.—27 G. 3. c. 13.—28 G. 3. c. 37.—32 G. 3. c. 8.—42 G. 3. c. 38.—43 G. 3. c. 38.—43 G. 3. c. 69.—49 G. 3. c. 81.—53 G. 3. c. 103.—55 G. 3. c. 30.—56 G. 3. c. 58.—59 G. 3. c. 32.—1 & 2 G. 4. c. 22—3 G. 4. c. 18. c. 27.—4 G. 4. c. 51.—5 G. 4. c. 54.]

For the duties on ale and beer, see stat. 43 *G.3. c.*69.—3 *G.4. c.*31. Duties.
For the drawbacks, see stats. 59 *G.3. c.*53.—3 *G.4. c.*18.—*c.*31. Drawbacks.

5 G.4. c.54.

Licence for brewing strong beer.

By stat. 5 *G.* 4. *c.* 54.* § 1. From *Oct.* 10th, 1824, all the duties on Excise licenses taken out by common brewers granted by any act of Parliament in force at the passing of the act (*viz.* those granted by 43 *G.* 3. *c.* 69, without limitation of time; and those granted by 55 *G.* 3. *c.* 30., which by 3 *G.* 4. *c.* 27., were to continue till 5th *July*, 1826:) are *repealed:* except in all cases relating to arrears of duty, or any fine, or penalty, incurred before 10th *Oct.*, 1824; and then remaining unpaid.

Duties on licences for brewers of beer.

By § 2. From 10th *Oct.* 1824, every brewer of beer in *G. B.* for sale, shall annually take out an excise licence for that purpose, and shall for every such licence, if the quantity of beer brewed by such brewer within the year ending the 10th day of *October*, previous to taking out such licence, shall not exceed 20 barrels, pay the sum of 10*s.*; if exceeding 20 barrels, and not exceeding 50, 1*l.*; if exceeding 50 barrels, and not exceeding 100 barrels, 1*l.* 10*s.*; if exceeding 100 barrels, and not exceeding 1000 barrels, 2*l.*; if exceeding 1000 barrels, and not exceeding 2000 barrels, 3*l.*; if exceeding 2000 barrels, and not exceeding 5000 barrels, 7*l.* 10*s.*; if exceeding 5000 barrels and not exceeding 7500 barrels, 11*l.* 5*s.*; if exceeding 7500 barrels, and not exceeding 10,000 barrels, 15*l.*; if exceeding 10,000 barrels, and not exceeding 20,000 barrels, 30*l.*; if exceeding 20,000 barrels, and not exceeding 30,000 barrels, 45*l.*; if exceeding 30,000 barrels, and not exceeding 40,000 barrels, 60*l.*, or, if exceeding 40,000 barrels, 75*l.*

Duty on licence of person first becoming brewer after 10th Oct. 1824.

That every person who shall, from 10th *Oct.* 1824., first become a brewer of beer in *G. B.* for sale, on taking out such licence as aforesaid, for that purpose, shall pay the sum of 10*s.* and within 10 days after 10th *Oct.* 1824, after taking out such licence, pay such further additional sum, as with the said 10*s.* shall amount to the duty herein-before mentioned, according to the number of barrels of beer brewed within the preceding year.

Barrels of table beer not to be reckoned for increasing the rate of licence.

§ 3. Enacts that the number of barrels of *table* beer, brewed by any brewer and charged with duty as table beer, shall not be reckoned or included in the account of the number of barrels of beer brewed by such brewer, for the purpose of increasing the rate of licence duty to be charged upon, and paid for, by such brewer, over and above the rate or sum of 2*l.*

24 G.3. sess.2. c. 41.

Common brewers' licences to be renewed annually. Penalty.

By stat. 24 *G.* 3. *sess.* 2. *c.* 41. §. 7. If any common brewer of strong beer or ale, shall neglect to take out a fresh licence, ten days at least before the expiration of 12 calendar months after taking out the first licence, or to renew the same annually, in the same manner, he shall forfeit 50*l.* See as to the times of expiration, and renewal of brewers' licences, 5 *G.* 4. *c.* 54. § 8, 13, 14. *infra* 76—78.

5 G.4. c.54.

Licences to brewers to retail their beer.

By 5 *G.* 4. *c.* 54. § 2. Every brewer of beer in *G. B.*, for sale, who shall retail such beer from his, her, or their, brewery, to be consumed elsewhere than in his, her, or their house, or premises, shall from 10th *Oct.* 1824, annually take out an excise licence for that purpose, and shall for every such licence pay 5*l.* 5*s.*

Licences to retail beer brewed by another brewer.

Every person in *G. B.* who shall sell strong beer only brewed by any other brewer, in casks containing not less than five gallons, or in not less than two dozen reputed quart bottles at one time,

* Intituled "An act to repeal the duties on licences to brew and to retail beer, spirituous liquors, and foreign wine, and to grant other duties in lieu thereof, and amend the laws of excise relating to such duties, and to brewers and retailers of beer." To take effect from 10th October, 1824, except as to its regulations concerning brewers retailing beer, which commences from 5th July, 1824. § 21, 22.

to be drank or consumed elsewhere than in his, her, or their house or premises, shall from and after 10th *Oct.* 1824, (see *infra* § 22. p.79.) annually take out an excise licence for that purpose, paying 3*l.* 3*s.* for the same. 5 G 4. c.54.

By § 6. It shall be lawful for any brewer or brewers of strong beer only in *G. B.* for sale, who shall have taken out and paid for his, her, or their licence to brew at and after the rate of 2*l.* at the least, to retail such beer from the premises where such beer is or has been brewed, and for any person not being a brewer of beer, either for sale or private use, to sell strong beer only brewed by any other brewer, in casks containing not less than five gallons, or in not less than two doz. reputed quart bottles at one time, upon such brewer or other person respectively taking out under the provisions of this act such respective excise licence for that purpose as before mentioned; which licence if taken out within the limits of the chief office of excise in *London*, shall be granted under the hands and seals of two or more of the commissioners of excise for the time being, or of such person or persons as they, or any four of them for the time being, shall from time to time direct or employ for that purpose; and if taken out in any part of *England* not within the said limits, shall be granted under the respective hands and seals of the several collectors and supervisors of excise, within their respective collection and districts; and the said commissioners of excise in *England*, or any two or more of them respectively, and the person or persons to be directed or employed by the said commissioners in *England* as aforesaid, and also all such collectors and supervisors are hereby required to grant such licences to such persons as aforesaid, who shall apply for the same, on such person or persons so applying first paying for such licences respectively, the sums of money hereinbefore (§ 2.) mentioned, to be applied and accounted for as herein (§ 4, 5.) directed; and that every such licence shall expire on the 10th *October* next after the day on which such licence shall be dated: Provided that no such licence shall authorize such brewer or brewers, or other person or persons taking out any such licence respectively as aforesaid, to sell any table beer, or any beer to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to, or occupied by the person or persons taking out such licence, or selling such beer, or in which he, she, or they shall have any concern, or to sell, deal in, or retail any other beer whatsoever, or in any other manner whatsoever than respectively as aforesaid, or shall entitle any such brewer or brewers, or other person or persons, to any licence to sell or retail cider, wine or spirits: Provided also, that within the limits of the Universities of *Cambridge* and *Oxford*, all persons applying for such licences shall apply to the persons heretofore granting common ale licences, who shall or may grant the same, in the same manner and according to the same rules and usages by which they have been accustomed to grant the said last mentioned licences: any thing in this or any other act or acts of parliament to the contrary thereof notwithstanding.

Brewers may retail beer from the premises where brewed, and any persons may sell beer brewed by any other brewer, in casks of 5 gall. content, or in 2 doz. quart bottles, to be consumed elsewhere, on taking out a licence for that purpose.

Licences where to be taken out;

but such licences not to authorize the selling of beer to be drank on the premises, &c.

Within the limits of the universities of Cambridge and Oxford, licences to be granted as heretofore.

§ 7. Enacts that where the entered premises for brewing of any brewer shall be situated out of a city or market town, and such brewer shall by reason thereof not retail beer, or be licensed as aforesaid to retail beer from such brewery, or make entry of any

Brewers whose premises are out of a market-town, &c. may

5 G 4. c. 54.

make entry of a place within some town to retail their beer.

part of such premises for that purpose, it shall be lawful for any such brewer to make entry of some one place, room, storehouse, cellar, shop, house or outhouse, for the retail of beer in any one adjoining city or market town, and to take out a licence for and retail therefrom the strong beer brewed by him, her, or them at such brewery as aforesaid, to be drank or consumed elsewhere, subject nevertheless to the several provisions and penalties herein contained, relating to brewers retailing beer from the premises where brewed: provided always, that no retail brewer, not being duly licensed to sell beer as a keeper of a common inn, alehouse, or victualling-house, shall deal in or sell any table beer, or any beer except the strong beer which he or they shall brew, and be charged with the duty thereon, or shall at any one time use, employ, or consume any less quantity than 16 bushels of malt at any one brewing, upon pain of forfeiting for each and every such offence the sum of 100*l.*

Penalty on brewers not licensed as victuallers selling table beer; or using less than 16 bushels of malt at a brewing, 100*l.*

Licences to be renewed annually.

By § 8. No such brewer or brewers as aforesaid shall retail any beer from the premises where such beer has been brewed, nor shall any such other person or persons sell beer brewed by any other brewery, in casks containing not less than 5 gallons, or in not less than 2 doz. reputed quart bottles at one time, after the expiration of such his, her, or their respective excise licence; and every such brewer and brewers, or other person and persons, shall take out a fresh licence for the purpose respectively herein-before mentioned, in the manner herein-before directed, before the expiration of such former licence, and so in like manner renew every such licence from year to year; and if any brewer or brewers (not being duly licensed to sell beer as the keeper of a common inn, alehouse, or victualling-house) shall retail or sell any beer at or from the premises where such beer is or has been brewed in any less quantity than a whole cask containing four gallons and a half, at one time, without having first taken out and paid for a licence to brew, under the provisions of this Act, at the rate of 2*l.* at the least; or if any brewer or brewers so licensed to retail beer, shall brew, sell, or have in possession any table beer; or if any person or persons so licensed as aforesaid to sell beer brewed by any other brewer, in casks containing not less than 5 gallons, or in not less than 2 doz. reputed quart bottles at one time, shall brew any beer, or sell or have in his or her possession any table beer, or shall sell any beer, in a less quantity at one time than as aforesaid; or if any brewer or brewers, not being duly licensed to sell beer as the keeper of a common inn, alehouse, or victualling-house, shall retail any beer at or from the premises where such beer is or has been brewed, or any such other person or persons shall sell any beer in casks or bottles as aforesaid, without first taking out such respective excise licence as aforesaid, authorising him, her, or them, so to do, or without renewing the same as is herein in that behalf directed, or shall sell any beer to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by the person or persons taking out such licence, or in which he, she, or they shall have any interest or concern, or shall sell, deal in, or retail any other beer whatsoever, or in any other manner than is authorised by such respective licence; every such brewer and brewers, person and persons so offending, shall for every such offence forfeit

Penalty in not conforming to the regulations in respect to retailing or selling beer, and as to quantity and place of selling and drinking, &c. 100*l.*

100*l.*: Provided always, that all persons trading in partnership, and in one house or shop only, shall not be obliged to take out more than one licence in any one year, for retailing any beer from the premises where brewed as aforesaid, or for selling any beer brewed by any other brewer, in casks containing not less than 5 gallons, or in not less than two doz. reputed quart bottles at one time; and that no one licence which shall be granted by virtue of this act shall authorise or empower any person or persons to retail or sell any beer as aforesaid, in any other place than in the place, room, storehouse, cellar, shop, house, or out-house, whereof entry in writing shall be made at the office of excise in the name or names of such brewer or brewers, or other person or persons for that purpose respectively as aforesaid, at the time of granting such licence, and in respect whereof such licence shall be granted.

5 G.4. c.54.

One licence sufficient for persons trading in partnership.

Entry of the place of sale to be made at the excise office.

§ 9. Enacts, that no brewer of beer in *G. B.* for sale shall be entitled to renew his or her licence to retail beer, unless he or she shall have brewed and been charged with duty for 100 barrels of strong beer at least in the year preceding the termination of such former licence, or so in proportion for such part of such preceding year for which such former licence shall have been taken out, but that every such brewer who shall first take out and pay for such retail licence as aforesaid shall be at liberty to retail beer, according to the provisions of this act, from the time of taking out such licence, notwithstanding such brewer shall then newly begin and set up the trade of a brewer, or shall not in any previous year have brewed or been charged with duty upon or for so much beer as would make the licence duty to which such brewer would be liable, amount to 2*l.*: any thing herein contained to the contrary thereof notwithstanding.

No brewer to renew his retail licence, unless he shall have been charged with duty for a certain quantity of beer in the preceding year.

§ 10. After reciting "whereas doubts have been entertained "whether any licensed brewer or brewers may lawfully sell beer "brewed by him, her, or them, by retail, from the entered pre-"mises of such brewer or brewers where brewed, to be drank "and consumed elsewhere than upon such premises; and it is "expedient to relieve all such person and persons hereafter men-"tioned from all penalties and forfeitures, if any, thereby in-"curred," Enacts, that no licensed brewer or brewers who shall have disclaimed the allowance made to common brewers for and in respect of the duties on beer, and who at any time heretofore have sold, or before 5th *July*, 1824, may sell by retail any beer brewed by him, her, or them, at or from the premises where brewed, to be drank and consumed elsewhere, shall be liable to any penalty by reason of retailing such beer without having an express licence to retail beer; and that every such brewer and brewers shall be altogether discharged from all penalties for or in respect of any such sale by retail as aforesaid, and all proceedings for the recovery thereof shall be null and void; any act or acts of Parliament to the contrary notwithstanding.

Licensed brewers who have retailed beer from their breweries, before July 5, 1824, discharged from penalties.

By § 11. No licensed brewer of beer for sale, who shall so be duly licensed to retail such beer under this act, shall sell, deliver, or send out, at or from his, her, or their brewery, or the premises belonging thereto or entered as aforesaid, or to any of his, her, or their customers, any beer in any quantity less than a whole barrel, except between 6 o'clock in the morning and 9 o'clock in the evening, or shall sell, deliver, or send out, any beer during

Retail brewers not to retail beer, except between 6 *a. m.* and 9 *p. m.*, or during divine service on Sundays.

5 G.4. c.54.

the usual hours of divine service on Sundays, on pain of forfeiting 20*l.* for every offence. See 15 *C.*2. *c.*11. § 11. *p.*90.

Powers, &c. of former acts saved.

By § 12. All the powers, regulations, restrictions, exceptions, &c., contained in any acts relating to licences to common brewers, or for the brewing of beer for sale, or to the retail of beer not expressly altered by this act, shall continue in full force.

When licences shall expire and be renewed.

By § 13. Every licence now or hereafter taken out, the duty and duties whereon are hereby repealed, and also every licence by this act directed to be taken out, shall expire on the tenth day of *October* in each year; and every common brewer or brewers, who shall take out or renew his, her, or their licence for brewing beer in *G. B.* on or before the said tenth day of *October*, and expiring on that day, shall pay duty for the same for such time or part of the year only as shall be between the day when such licence was or ought to have been renewed or taken out for that purpose, and the said tenth day of *October*, and shall then renew such licence under the provisions of this act, to expire on the tenth *October*, 1825.

When common inns, &c. are licensed by the magistrates at other times than September, the excise beer, &c. licences shall expire on

§ 14. After reciting that whereas licences to keep common inns, alehouses, or victualling-houses, are in some parts of *G. B.* granted by the justices and magistrates at other parts of the year than in the month of *September* in each year (*a*), and excise licences to retail beer, spirits, and foreign wine respectively, in such common inns, alehouses, or victualling-houses, have been granted, and are now in force, Enacts, that nothing in this act shall extend to alter or affect any licence duly granted and now in force, to retail or sell beer, spirits, or wine, in any common inn, alehouse, or victualling-house, before the expiration of the current year for which each such licence respectively has been granted; and that in every future year, every excise licence to sell beer, spirits, or wine, in any common inn, alehouse, or victualling-house duly authorised to be kept, shall be granted for the year ending on the next succeeding excise quarter day after the expiration of the year for which such common inn, alehouse, or victualling-house shall be authorised to be kept, and shall then respectively expire, and be renewed under the provisions of this act, to the day of renewal.

Renewing spirit and wine licences in certain cases.

As to renewing spirit and wine licences expiring before the end of the current year for which the inn, &c. is authorised to be kept, see *post, Spirituous liquors,* (16.) *Wine,* (22.)

Who may not take out an excise licence to retail beer.

By § 15. Persons disabled by conviction from keeping a common inn, &c. shall not be allowed to take out a retail brewer's licence, on penalty of 50*l.* See Alehouses. (*Excise Licence.*)

Licensed brewers of strong and table beer charged with duty thereon within three months before 4 June, 1824, may take out licence to retail beer, on complying with the regulations herein mentioned.

§ 16. It shall be lawful for any brewer or brewers who shall within three months before the passing of this act (viz. 4th of *June*, 1824) have been charged with duties on strong and table beer respectively, and shall at the passing this act be a licensed brewer or licensed brewers, carrying on the trade of a brewer of strong and table beer, respectively to take out such licence to retail as aforesaid, and to retail under this act the strong beer by them brewed and charged with duty, without incurring any penalty for brewing, or having in possession, or selling the table-beer by them brewed, and which shall be charged with duty, on condition nevertheless that every such brewer shall sell the whole of such table beer, and send the same out into consumption in

(*a*) But see 3 G.4. c.77. § 7. supra, Vol. I. Alehouses, *Licensing*, p. 41.

casks containing at the least nine gallons in every such cask, and accompanied with a certificate, the particulars whereof shall be duly entered in the counterpart of every such certificate, in the certificate book delivered by the officer of excise to and kept by such brewer; and that if any such brewer shall not sell the whole of the table beer brewed or made by him or her, or which shall come into his or her possession, or on which such brewer shall be charged with duty as and for table beer, and at or below the price of and allowed and limited for table beer, from time to time as the same is brewed or made; or shall sell or send out any part thereof otherwise than in a whole cask, containing at the least nine gallons, or without such certificate as aforesaid, expressing the date on which each such cask is sent out, and the name and place of residence of such brewer and brewers, and of the person or persons to whom the same is sold, sent out, and delivered, together with the quantity of the beer as table beer, and the price at which the same is so sold, sent out, and delivered; or shall grant, issue, write, or enter any untrue certificate or counterpart for or in respect of any such table beer; or shall mix with or put any table beer wort or table beer into or amongst any strong beer wort or strong beer; or shall keep or have any table beer in the place entered by such brewer or brewers, under the regulations of this act, for the retail of beer, every such brewer shall for every such offence forfeit the sum of 100*l.*; and on conviction the retail licence granted to him or her shall be void, and such brewer shall be wholly disabled from taking out any such retail licence for the future. 5 G. 4. c. 54. Penalty 100*l.*

§ 19. If any person or persons soever shall assault, resist, oppose, molest, obstruct, or hinder any officer or officers of excise in the due execution of the powers by this act, or any other act relating to any duty of excise on beer, or any drawback payable for or in respect thereof granted, every person so offending shall for every such offence forfeit the sum of 200*l.* Penalty on persons obstructing officers, 200*l.*

§ 20. All fines, penalties, and forfeitures imposed by this act shall be sued for, or mitigated, by such ways as any fine, &c. may be sued for, or mitigated by any law of excise, or by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, or in the court of exchequer in *Scotland*; and one moiety of every such fine, &c. shall be to H. M., and the other moiety to him or them who shall discover or sue for the same. Recovery and application of penalties.

§ 21. This act shall commence and take effect (except where otherwise specially provided, as in § 22.) from and after the 10th day of *October*, 1824. Commencement of this act

§ 22. Provided, that all the several provisions in this act, so far as the same affect brewers retailing beer, shall commence and take effect from 5th *July*, 1824, and that it shall be lawful for the commissioners of excise, and the person or persons authorised by them, and the several collectors of excise, and they are severally required to receive from the several persons liable to pay the same, on request, a proportionate part of the retail licence duty hereby imposed on such retail brewer on every licence for that purpose, and to grant such licence for the remainder of the year ending the 10th *October*, 1824, under the several provisions of this act, any thing herein contained to the contrary thereof notwithstanding. But the regulations as to brewers retailing beer to take effect from July 5, 1824, and a proportionable part of licence duty may be taken.

Licence to brew beer of intermediate strength between strong beer and table beer. See 4 G. 4. c. 51. *post.* Licence for brewing beer o middlestrength

55 G.3. c.30. &c.

Licence for brewing small beer.

And every common brewer of table beer, not being a common brewer of strong beer, shall take by stat. 24 *G.* 3. *sess.* 2. *c.* 41. § 7. out a licence and pay for the same yearly 1*l.* by 43 *G.* 3. *c.* 69.; and by 55 *G.* 3. *c.* 30. 1*l.* additional; which licence shall be renewed annually in like manner, on the penalty of 10*l.*

42 G.3. c.38. Retailing beer at more than 1½*d.* *p. quart* without licence, penalty 50*l.*

By stat. 42 *G.* 3. *c.* 38. § 18. No person, not being a common brewer, shall retail beer at any higher price than 1½*d.* the quart, without entering into a recognizance and obtaining a licence as a common alehouse keeper, under pain of forfeiting for each offence 50*l.* over and above any penalty imposed upon selling beer or ale without a licence.

Persons in partnership.

But by stat. 24 *G.* 3. *sess.* 2. *c.* 41. § 8. Persons in partnership need only take out one licence for one house.

53 G.3. c.103. Executors, &c. of persons having licences may carry on trade till the licences expire.

By stat. 53 *G.* 3. *c.* 103. Upon the death of any person licensed, or upon the removal of any person from the house or premises in which such licence shall authorise him to make or manufacture, trade, deal in, vend, or sell any exciseable commodities, the commissioners of excise for the time being, or any one of them, and the several collectors and supervisors of excise in *England* respectively, within their respective collections and districts, may authorise and empower the executors, administrators, or the wife or child of such deceased person, or the assignee or assigns of such person so removing, who shall be possessed of such house or premises, in like manner to make or manufacture, &c. &c. the several sorts of commodities mentioned in such licence, in the same house or premises where such person so licensed by virtue of such licence carried on such trade, during the residue of the term for which such licence was originally granted, without taking out a new licence during the residue of the said term.

3 G.4. c.18. When beer shall be accounted *strong* and when *table*.

Note: — By stat. 3 *G.* 4. *c.* 18. § 11. All beer and ale above the price of 16*s.* the barrel (exclusive of the duties) shall be deemed to be strong beer or ale; and all beer of the price of 16*s.* the barrel or under (exclusive of the duties), shall be deemed to be table beer within the meaning of the several acts in force relating to beer or ale.

15 C.2. c.11. Notice of erecting and altering tuns, &c. for brewing beer or ale.

By stat. 15 *C.* 2. *c.* 11. § 1. No common brewer, inn-keeper, victualler, or other retailer of beer or ale shall, without first giving notice at the next office of excise, or to the commissioners or sub-commissioners, or one of them, erect, alter, or enlarge any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts, on pain of 50*l.* And every other person, in whose occupation any house, out-house, or other place shall be, where any such private tun, &c. shall be found, shall also forfeit 50*l.* And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited, to be sold to the use of the poor.

5 G.3. c.43. No tun, batch, &c. to be altered without notice.

By stat. 5 *G.* 3. *c.* 43. § 25. If any common brewer shall *alter* the position of any tun, batch, float, cooler, or copper after the same hath been set up and fixed, without first giving notice thereof in writing to the officer; or shall place any boards, stone, wood, or any other materials at, in, or upon the dipping-place thereof; or shall by any other means prevent or hinder the officer from taking true dips and gages of such beer, ale, or worts, he shall forfeit 20*l.*

7 & 8 W. c.30. Officer may enter and examine suspected places.

And by stat. 7 & 8 *W.* 3. *c.* 30. § 27. The officer of excise in the day-time, and, in the presence of a constable, where he shall have just suspicion that any private back, tun, or other concealed vessel or receptacle is used by any brewer, distiller, or maker of exciseable

liquors, on request first made and cause declared, may break open the door, or any part of such brewhouse, warehouse, or other room in his possession, and enter and break up the ground in such house or room, or ground near adjoining, in his possession, to search for such back, tun, or other vessel, or any pipe or conveyance leading thereto; and if he find any private pipe or other conveyance, he may search after and follow the same, and if it shall lead into any ground, house, or place in the possession of any other person, on like request and with a constable, he may enter the same, and break open the ground or any part of the house, if occasion shall be, to follow such private pipe, in order to find out such concealed back, tun, or other vessel, making good the ground or house so broken up, or giving reasonable satisfaction to the owner; and if any person shall oppose such officer, he shall forfeit 20*l*. 7 & 8 W. c.30.

By stat. 8 & 9 *W*. 3. *c*. 19. § 4. and 42 *G*. 3. *c*. 38. § 15. No common brewer shall keep any pipe or other private conveyance from any copper in his brewhouse, except the regular discharge-pipes leading directly to his mash-tun, hop-back, or coolers; nor shall keep any fixed or other pipe or conveyance leading from any under-back, hop-back, back, or cooler, except such as without any private or concealed stop-cock therein or thereon, shall have a direct communication with the entered coppers, backs, coolers, or working tuns only, on pain of 200*l*. for every such pipe or conveyance. 8 & 9 W. c. 19. 42 G. 3. c. 38. Private pipes or conveyances.

And by stat. 8 & 9 *W*. 3. *c*. 19. § 5. The excise officer in the day-time, and in the presence of a constable, on request made and cause declared, may break up the ground in any common brew-house or the ground near adjoining, or any wall, partition, or other place, to search for any such private pipe or other conveyance, and, upon finding, may follow the same, and break up the ground, house, wall, partition, or other place, through or into which the same shall lead, and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid. 8 & 9 W. c. 19. Power of officers to search for private pipes or conveyances.

§ 6. And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall, or other place so broken up, or make satisfaction to the owner; and if any person shall oppose such officer, he shall forfeit 50*l*.

§ 7. But any common brewer may use any pipes, stop-cocks, or other conveyances above ground, which are public and in open view, for letting his worts out of his copper into his public backs or coolers, and out of the same into his tuns, batches, or floats; or out of the tun into his cask.

And by stat. 15 *C*. 2. *c*. 11. § 1. and 1 *W*. 3. *st*. 1. *c*. 24. § 11. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying off any beer or ale or worts in cask, on pain of 50*l*.; and every other person, in whose occupation any such place shall be, shall also forfeit 50*l*. 15 C. 2. c. 11. 1 W. st. 1. c. 24. Private cellar.

By stat. 49 *G*. 3. *c*. 81. § 8. Where any vessels would, if found, be liable to forfeiture for want of entry, or being private or concealed, all the utensils employed, or fit to be employed in the manufacture of any exciseable commodity, in any private or concealed room or place where any such vessel shall be found, shall be forfeited, and may be seized by any officer of excise. 49 G. 3. c. 81.

22 & 23 C. 2. c. 5. Private person suffering liquors to be brewed in his house.

By stat. 22 & 23 *C.* 2. *c.* 5. § 10. If any person inhabiting in a market town, city, or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer or ale to be consumed in his own private family, shall permit any beer, ale, or worts to be brewed in his house, outhouse, or other place thereunto adjoining, other than for his own family, servants, labourers, or for others by way of charity, hospitality, or free gift; or shall lend out any of his brewing vessels, other than those which are moveable and unfixt, he shall forfeit 50*l.*

5 G. 4. c. 54. Repeal of 22 and 23 C. 2. c. 5. § 10. prohibiting the loan of brewing utensils.

By stat. 5 *G.* 4. *c.* 54. § 18. Whereas by stat. 22 & 23 *Car.* 2. *c.* 5. it was amongst other things enacted, that if any person or persons inhabiting in any market town, or in any city or town corporate, or parts adjoining to any city or town corporate, where there is or shall be a common brewhouse, having and lawfully using any private brewing vessels for the brewing and making of beer or ale to be spent and consumed in his or their private families, shall lend out any of their brewing vessels to be made use of by any other person or persons, not being of his or their family, for the brewing of beer or ale for the use of any other person or persons, then such person or persons shall forfeit for every such offence the sum of 50*l.*: and whereas it is expedient to repeal so much of the said act as is herein before recited; it is enacted, that from the passing of this act, *viz.* 4th *June*, 1824, the same shall be and is repealed.

12 C. 2. c. 24. Gauger to enter and take account.

By stat. 12 *C.* 2. *c.* 24. § 33. The gauger shall at all times in the day, (and in the night with a constable,) be permitted, upon his request, to enter the brewhouse and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, wort, perry, cyder, or metheglin; and to gauge all coppers, vats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners, leaving a true copy of such return under his hand with such brewer, maker, or retailer; which return shall be a charge upon such brewers, makers, or retailers.

If there be refusal to permit the gauger, he may forbid sale of the liquor.

§ 33. And if any such common brewer, maker, or retailer shall refuse to permit such gauger to enter his brewhouse or other place aforesaid, or to gauge or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gauger to sell, carry out, or deliver to any of his customers any beer, ale, or other the liquors aforesaid; and if he shall, after such warning given, sell, carry, or deliver out the same, or any part thereof, not having paid the duty of excise, he shall, besides the forfeiture of double value, forfeit also the sum of 10*l.*

7 & 8 W. c. 30. Penalty on the brewer for refusal.

By stat. 7 & 8 *W.* 3. *c.* 30. § 22. If any common brewer, innkeeper, or victualler shall, on request or demand made by the gauger in the day time, or in the night in presence of a constable, refuse to permit him to come into his house, brewhouse, or other place used by him; or being entered, shall refuse him to stay in the brewhouse whilst his guile is brewing, and quietly gauge and take an account of the several worts as they are brewed off, and let into his backs and tuns, and to see their strong and small [and table beer by 42 *G.* 3. *c.* 33. § 7.] drink cleansed and carried out without mixture, and to take an account of the goods in the mesh-tun, or the quantity of malt from which such worts are made, he

shall forfeit 20*l*., and the prosecutor shall not be obliged to prove that the party carried out any part of such guile before he paid the duties. 7 & 8 W. c.30.

By stat. 15 *C.* 2. *c.* 11. § 16. If any brewer shall bribe the gauger to make a false return, or to omit the executing of his employment, he shall forfeit 10*l*.; and the officer taking the bribe shall also forfeit 10*l*. upon conviction, on the oaths of two witnesses before two justices of the peace, or the chief magistrate of the place, to be levied by distress; and for want of distress the offender to be committed to the common gaol for three months. 15 C.2. c.11. Offering or taking bribes.

By stat. 15 *C.* 2. *c.* 11. § 7. As often as there shall be occasion, two able artists shall be appointed, one of them by the commissioners or sub-commissioners, and the other by the brewers of any city or place, who shall be sworn before a justice to take and compute the just contents and gauge of all coppers, fats, tuns, backs, and coolers, and all other brewing vessels of that nature, and to deliver under their hands one copy of the contents to the commissioners, and another to each respective brewer. Indifferent gaugers may be sworn.

By stat. 8 & 9 *W.* 3. *c.* 19. § 2. Every common brewer who shall make any guile of beer or ale shall declare to the gauger how much strong beer or strong ale he intends to make of such guile, and how much small, [or table beer by 42 *G.* 3. *c.* 38. § 7.] before any part of the guile is cleansed or removed out of his tuns; and if such brewer or his servants shall refuse to make such declaration, the gauger shall return the whole as strong, and the brewer pay the duties, and shall also forfeit for every barrel in such guile [100*l*. by 42 *G.* 3. *c.* 38. § 16., the penalty of 20*s*. by 8 & 9 *W.* being found insufficient to prevent the fraud.] If such brewer or his servants, after such declaration, shall make any increase of the strong beer or ale, or if the gauger shall find any beer, ale, or worts of the same guile laid off, over and above the quantity so declared, he shall forfeit for every barrel so increased, laid off, or found over and above such quantity, 5*l*., and the servant assisting therein 20*s*. for every such barrel, and in default of payment be imprisoned three months: and if, on an information against the brewer for the said penalties, it appear by his evidence that the strong beer or ale so declared was increased by adding to or mixing with it any beer or ale that was left in the brewhouse of a former guile, he shall nevertheless incur the penalties, except it be also proved upon the oath of one witness that the strong beer or ale so added to such guile was added in the sight and view of the gauger. 8 & 9 W. c.19. Brewer to declare how much he intends to make.

§ 3. Whereas many brewers, having strong beer or ale remaining in the brewhouse from the time it was brewed until the next guile or brewing, the quality of which they frequently alter by mixing with the same new small beer or old returned drink, and then add the beer and ale so altered to the next guile; if it shall appear to the gauger that the quality of such strong beer or ale so remaining in the brewhouse of a former guile, and added to a guile of new drink, hath been so altered since it was brewed, he shall return all such beer and ale so altered and added to a guile of new drink, as if the same were then originally brewed, and had never been charged before; and the duties shall be paid accordingly. See *post*, p. 86, 87. Mixing drink of a former brewing.

1 & 2 G. 4. c. 22. Brewers to enter in a book delivered by the officer the quantity of malt intended to be used in the next brewing, &c.

By stat. 1 & 2 *G.* 4. *c.* 22. § 1. Every brewer of beer for sale shall enter, or cause to be entered in a book or paper, to be delivered to him by the officer of excise, and at all times kept by such brewer in some public and open part of his entered premises ready for the inspection of the officers of excise, the quantity of malt which he or she shall intend to use in his or her next brewing, together with the day when such brewing is intended to be made, and such entry shall be so made before any part of such malt shall be mashed, or any water or other liquor put thereto, or mixed therewith; and every such brewer shall, at the time of making such entry, write or cause to be written, in such book or paper, opposite such entry, the date when such entry was so made; and if any such brewer shall refuse or neglect to make such entry as aforesaid, or shall cancel, obliterate, or alter, or cause, or suffer, or permit to be cancelled, obliterated, or altered, any such entry, or shall make any untrue entry therein, or shall not at all times keep such book or paper in some public and open part of his entered premises ready for the inspection of the officers of excise, or shall mash, or put to, or mix any malt with water or other liquor before such entry shall be made, he or she shall, for every such offence, forfeit the sum of 200*l.*

Mashed malt not to be removed till gauged and taken an account of by the officer.

§ 2. No such brewer shall remove or cause to be removed his or her malt which has been mashed, or any part thereof, from the tun or vessel in which the same has been mashed, until the proper officer shall have gauged and taken an account of the quantity of such malt, or use, cause, permit, or suffer to be used any means whatever to prevent or hinder such officer or officers of excise from taking an accurate gauge and account thereof; and if any person or persons shall remove, or cause, suffer, or permit to be removed any part of such malt, before such officer shall have gauged and taken an account of the same, or shall use any means as aforesaid, or obstruct, hinder, molest, or prevent any such officer or officers in or from so doing, or in execution of any of the powers and authorities given or granted to him or them by this act, every such person or persons shall severally forfeit for every such offence the sum of 200*l.* Provided that no such brewer or other person shall incur the penalty aforesaid, for removing any such malt after all the worts have been drawn off from such malt, without any officer having gauged and taken an account thereof, if such brewer shall at the time of making such entry, have specified in such book or paper and entry as aforesaid the time for such officer to attend to take such gauge and account, and such officer or officers shall not attend for that purpose within an hour after the time so specified.

Penalty 200*l.* Not incurred for removing malt after worts drawn off if officer neglect to attend within an hour after the specified time.

Samples of wort may be taken after it is drawn from the mash tun.

§ 3. It shall be lawful for any officer of excise to take a sample or samples, not exceeding one pint at each time, of any wort or worts at or on the entered premises of any such brewer, at any time after the same shall have been drawn from the mash tun, as often as may be necessary for the purpose of ascertaining the specific gravity thereof; returning such sample to such brewer after the specific gravity thereof has been ascertained, or paying him or her for the same at and after the rate of the current price of beer made from such wort; and no such brewer shall ferment or mix, or cause, permit, or suffer to be fermented or mixed, any wort with any yeast or other matter or thing for or occasion-

ing fermentation, until the proper officer has taken such sample; and if any such brewer shall ferment or mix, or cause, permit, or suffer to be fermented or mixed, any of his or her wort with any yeast or other matter or thing for or occasioning fermentation, until such officer has taken such sample, he or she shall forfeit for every such offence the sum of 200*l.*: provided that no such brewer shall incur the penalty last aforesaid, for fermenting or mixing any of his or her wort with yeast, or any other matter or thing occasioning fermentation, after the expiration of one hour after such wort has been run or drawn off from the copper in which the same has been boiled with hops, without any sample being thereof taken as aforesaid, if such brewer shall at the time of making such entry have specified in such book and paper and entry the time for such officer to attend to take and draw such sample, and such officer shall not attend for that purpose within an hour after the time so specified.

1&2 G.4. c.22. Worts not to be fermented till such samples are taken, on penalty of 200*l.*

Not to be incurred if officer neglect to attend within an hour after the specified time.

§ 4. There shall be delivered by the proper officer of excise to every such brewer, and to every dealer in beer or ale, a book or books to be prepared with proper printed forms and titles for the purpose hereinafter mentioned, and kept by every such brewer and dealer in some public and open part of his or her entered premises; and no beer or ale shall be sold, sent out, or delivered by the brewer thereof, or by any dealer therein, to any brewer, victualler, dealer in or retailer of beer or ale, or other person or persons, without a certificate filled up and cut out progressively from the printed forms for such certificates contained in such book as aforesaid, to be left therewith, signed by such brewer or dealer selling, sending out, or delivering the same, or some person on his behalf, certifying the date, quantity, and quality of such beer or ale, to whom sold, and that the duty has been duly charged thereon, and at what place, at what rate, and upon what person such charge was made; and the brewer or dealer selling, sending out, or delivering any such beer or ale as aforesaid, shall at the same time make a correspondent entry thereof, containing the same particulars, in such book as aforesaid; and such book, with such entries so made therein as aforesaid, shall at all times be open and exposed in the entered premises of such brewer or dealer as aforesaid, to the perusal of any officer of excise surveying the said premises, and shall be delivered by such brewer or dealer to any officer of excise upon demand; and if any such brewer or dealer shall at any time sell, send out, or deliver any beer or ale to any brewer, victualler, dealer in or retailer of beer, or other person, without delivering such certificate, or making such entry in such book, or shall convey away or conceal any such book or books, or cancel, obliterate, destroy, or tear out any leaf therefrom, or entry therein, or shall make any false entry therein, or shall oppose, molest, obstruct, or hinder any officer of excise in inspecting any such book, or entry therein, or shall at any time neglect or refuse, when required, to give up to any officer such book or books, every such brewer or dealer so offending shall for every such offence severally forfeit the sum of 200*l.*

Books to be delivered to brewers containing forms of certificates, and no beer or ale shall be sent out without a certificate taken therefrom, certifying the date, quantity, and quality.

A similar entry shall be made in the book, which shall be open for the inspection of the officer.

Penalty for non-compliance, &c. 200*l.*

§ 5. If any officer of excise shall discover and find any increase in the stock of any brewer, victualler, dealer, or retailer over and above the quantity of beer or ale which the

Increase in the stock beyond the preceding

1&2 G.4. c.22.

survey, not satisfactorily accounted for, shall be forfeited, and the brewer shall forfeit 200*l*.

officer found in such brewer, victualler, dealer, or retailer's custody, at the time of the last preceding survey upon such brewer, victualler, dealer, or retailer; and which increase such brewer, victualler, dealer, or retailer, shall not thereupon satisfactorily account for, as arising from beer duly received with such certificate as aforesaid, or brewed by himself, and on which the duty has been duly charged; such increase, or a quantity of beer or ale equal thereto, shall be deemed and taken to be beer or ale brewed without payment of duty, and shall be forfeited; and a quantity equal to the increased quantity shall be seized and taken by the officer of excise who shall discover the same, from and out of such stock; and the person in whose stock such increase shall be discovered and found, shall for each and every such offence forfeit the sum of 200*l*.

7 & 8 W. c.30. Removing drink before the whole is brewed off.

By stat. 7 & 8 *W.* 3. *c.*30. § 21. If any common brewer, innkeeper, or victualler, shall cleanse or remove out of his brewhouse any part of his guile or brewing of beer, ale, or worts, before the whole of such guile is brewed off, and until the gauger shall or might have taken an account of the same, without first giving notice to the supervisor or gauger, at what time, what quantity, and to what place he intends to remove, he shall, for every barrel, forfeit 40*s*.

1 W. sess.1. c.24. Gauger may charge for worts missing.

By stat. 1 *W.* 3. *sess.*1. *c.*24. § 6. Where it shall appear to the gauger that any worts are missing or not fairly let down into the tun, and the gauger cannot find the same, he may charge for so much beer or ale as such worts so missing would reasonably make.

Gauge may be taken in warm worts.

§ 7. Gaugers may take their gauges, and make their returns and charges upon warm worts in the backs, coolers, or other vessels; and in such case make allowance of one tenth part thereof for wash and waste; which worts shall not be afterwards charged when made into beer or ale.

42 G.3. c.38. Mixing strong beer or worts with table beer or worts.

By stat. 42 *G.* 3. *c.*38. § 12. If any common brewer shall mix any strong beer or strong worts with any table beer or table beer worts, or with water in any guile tun, working tun, or fermenting tun, after such declaration of the quantity of the guile; or shall mix the same in any vat, cask, tub, measure, or other vessel or utensil, not being an entered guile tun, working tun, or fermenting tun, he shall forfeit 200*l*.

15 C.2. c.11. 1 W. sess.1. c.24. Mixing small beer with strong.

By stat. 15 *C.* 2. *c.* 11. § 12. and 1 *W.* 3. *sess.*1. *c.*24. § 11. If any common brewer, innkeeper, victualler, or other retailer of beer or ale, shall, after an account hath been taken by the gauger, convert any small beer or small worts so taken account of into strong beer or ale, by mingling, letting down, or striking over the same, and shall sell, deliver out, or retail the same, without giving notice to the same gauger of the quantity so mingled and converted, or if any such brewer or retailer shall, after the said time, conceal or convey any beer, ale, or worts not gauged from the sight of the gauger, whereby the king may be defrauded of the duty, he shall forfeit 20*s*. a barrel.

2 G.3. c.14.

By stat. 2 *G.*3. *c.*14. § 2. If any common or other brewer, innkeeper, victualler, or retailer of beer or ale, shall mix, or cause or suffer to be mixed in any vessel, tub, measure, or otherwise however, any strong beer, ale, or strong worts, with any small beer or small worts, or with water, after the gauge shall have been taken, he shall forfeit 50*l*.

By stat. 42 *G.*3. *c.*38. § 20. Which recites, that whereas many persons, under pretence of recovering stale beer, or making or preparing beer finings, or colouring for beer, or under other pretences, have fabricated from divers ingredients, injurious to the health of H. M.'s subjects, liquor to resemble beer or ale brewed entirely from malt and hops, or to be mixed with beer or ale so brewed, to the great injury of H. M.'s subjects, of the fair trader, and of H. M.'s revenue, it is enacted, that from the 1st of *May*, 1802, no person shall mix, fabricate, or prepare, or suffer to be mixed, &c. from beer-grc inds, stale beer, sugar water, distiller's spent wash, sugar melasses, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, opium, or any other material whatever (except malt and hops), any liquor to imitate, resemble, or to be mixed with or used as beer or ale brewed from malt and hops; nor shall sell or dispose of, or cause to be sold, &c. to any brewer of, dealer in, seller, or retailer of beer or ale, or to any other person whatever, any liquor so mixed or prepared, on pain of 200*l.* for every offence; and all liquor so mixed or prepared, and also all beer-grounds, stale beer, &c. &c. other than malt and hops, in the custody or possession of such person, together with every copper, cooler, back, tun vat, or other vessel or utensil whatsoever, in which any such liquor or material shall be contained, or which shall have been used in the mixing, preparing, or keeping any such liquor; and all such liquor and materials, together with every such copper, &c. as aforesaid, shall be forfeited, and may be seized by any officer of excise.

42 G.3. c.38. Penalty on persons mixing liquor to imitate, or to be mixed with or used as beer made from malt and hops, or selling such liquor, 200*l.* and forfeiture of liquor and utensils.

§ 21. No brewer of, or dealer in, or seller of beer or ale, shall receive into his custody or possession any stale beer or beer-grounds, or shall mix with any beer or ale any liquor fabricated or prepared from beer-grounds, stale beer, or any of the ingredients aforesaid, (except malt and hops), or in the preparation whereof any of the said ingredients is or shall be mixed or made use of, nor shall receive into his custody or possession any liquor compounded or prepared as aforesaid, on pain of forfeiting 100*l.*

Penalty on brewer receiving stale beer-grounds, or mixing any liquor with beer except malt and hops, 100*l.*

§ 22. No brewer or dealer in, or seller of beer or ale, shall be subject to the said penalty of 100*l.* for receiving any stale beer returned to him for being disliked by any person to whom he had sold such beer, or of taking back any beer-grounds in the bottom of any cask returned to him by any person to whom he had sent the same, filled with the beer from whence such grounds were produced; also, no dealer in or seller of beer or ale, not being a brewer of beer or ale, shall be liable to the said penalty for having or taking into his custody or possession any liquor compounded or prepared from stale beer-grounds, stale beer, or any of the ingredients aforesaid, or in the fabrication or preparation whereof any materials or ingredients as aforesaid, other than malt and hops, have been mixed or made use of, if at the trial or hearing for recovery of the said penalty such dealer or seller shall prove to the satisfaction of the court and jury, or of the commissioners of excise, or justices before whom such hearing shall be had, that such liquor was bought and received by such dealer or seller in the fair and usual course of trade, of some regular brewer of beer or ale, and that such dealer or seller had no knowledge of such liquor being compounded or prepared contrary to this act.

Not to extend to brewer receiving returned beer from his customers, nor to any dealer not being a brewer, if he can exculpate himself.

42 G. 3. c. 38.
Excise officers may take samples of suspected liquors; and

§ 23. Every excise officer may, whenever it seems to him expedient, take samples of any liquor which he shall suspect to be liquor so mixed or prepared as aforesaid, to resemble or be mixed with or used as beer or ale brewed from malt and hops, such sample not exceeding three gallons at any one time, on paying after the rate of 1*s.* 6*d.* by the gallon.

may search suspected places; and

§ 24. If any officer of excise shall have cause to suspect that any person does in any place mix or prepare from any such ingredients as aforesaid any liquor to resemble, be mixed with, or used as beer or ale brewed from malt and hops, or to be disposed of to any brewer of or dealer in beer or ale, or to any other person, or that such liquor so mixed or prepared has been disposed of to any brewer or dealer in, seller or retailer of beer or ale, or to any other person, and that the same is deposited in any place whatsoever, then if such place be within the limits of the chief office of excise in *London,* upon oath by such officer before any two of the commissioners, &c., or if such place be in any other part of *G. B.*, upon oath before a justice for the county, &c. or place, where such suspected place shall be situate, setting forth the ground of his suspicion, it shall be lawful for the said two commissioners, or the justice respectively, as the case may require, if they or he shall judge it reasonable, by special warrant under hand and seal, to empower such officer by day or night, but if in the night, then in the presence of a constable or other lawful officer of the peace, to enter into every such place where he shall so suspect any person to mix or prepare from beer-grounds, stale beer, and the ingredients aforesaid, any liquor to resemble or be used as beer or ale, brewed from malt and hops, or to be mixed with beer or ale, or sold or disposed of to any brewer, dealer, seller, or retailer, as aforesaid, or to any other person, or where such officer shall suspect any such liquor so mixed or prepared, or sold or disposed of to any brewer, &c. or any other person, is lodged or deposited, and to seize as forfeited all such liquor there found, and every other material or ingredient whatsoever as aforesaid (other than malt and hops), and every copper, cooler, back, tun, vat, and other vessel and utensil which he shall there find, in which any such liquor or ingredient shall be contained, or which shall have been made use of in the mixing, preparing, or keeping any such liquor; and the person, in whose custody or possession the same respectively shall be found, shall forfeit 100*l.*

may seize the liquor, ingredients, and utensils.

Penalty of 100*l.*

Proof to lie on the owner.

§ 25. And if any question thereof arise, the proof of such liquor not being liquor mixed or prepared from other ingredients than malt and hops, shall lie on the owner or claimer thereof.

56 G. 3. c. 58.
No material or preparation of the description herein mentioned shall be in the possession of any brewer or dealer, or used in colouring of beer.

By stat. 56 *G.* 3. *c.* 58. (by which stat. 51 *G.* 3. *c.* 87. is repealed) § 2. "No brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, shall receive or take into, or have in his, her, or their custody or possession; or make, or use, or mix with, or put into any worts or beer, any liquor, extract, calyx, or other material or preparation for the purpose of darkening the colour of worts or beer, or any liquor, extract, calx, or other material or preparation, such as has been heretofore, or as shall hereafter be made use of for or in the darkening of the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing; or shall receive or take into, or have in his, her,

56 G.3. c.58.

or their custody or possession, or use or mix with, or put into any worts or beer, any melasses, honey, liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, or opium, or any extract or preparation of melasses, honey liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, or opium, or any article or preparation whatsoever, for or as a substitute for malt or hops; and if any such brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, shall receive or take into, or have in his, her, or their custody or possession, or make or use in brewing, or mix with or put into any worts or beer, any liquor, extract, calx, or other material or preparation for the purpose of darkening the colour of worts or beer, or any liquor, extract, calx, or other material or preparation such as has been heretofore or as shall hereafter be made use of for or in the darkening of the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing, or shall receive or take into, or have in his, her, or their custody or possession, or shall use or mix with, or put into any worts or beer any melasses, honey, liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, or opium respectively, or any article or preparation whatsoever, for or as a substitute for malt or hops; all such liquor, extract, calx, melasses, honey, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, opium, extract, article, and preparation as aforesaid, and also the said worts and beer respectively, shall be forfeited, together with the casks, vessels, or other packages containing the same, and shall and may be seized by any officer or officers of excise; and such brewer or brewers of, dealer or dealers in, or retailer or retailers of beer so offending as aforesaid, shall for each and every such offence forfeit and lose the sum of 200*l.*"

Penalty.

No druggist shall sell such colouring to any brewer or dealer.

§ 3. "No druggist or druggists, or vender or venders of, or dealer or dealers in drugs, or chymist or chymists, or other person or persons whatever, shall sell, send, or deliver, or cause, procure, permit, or suffer to be sold, sent, or delivered to any licensed brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, knowing him, her, or them to be so licensed or to be reputed to be so licensed, or shall sell, send, or deliver, or cause or procure to be sold, sent, or delivered to any other person or persons for or on account of, or in trust for, or for the use of any such brewer or brewers, dealer or dealers, or retailer or retailers, any liquor called or known by the name or description of or sold as colouring, from whatever materials the same may have been made, or any other material or preparation other than unground brown malt, for the purpose of darkening the colour of worts or beer, or any liquor or preparation such as has been heretofore or shall hereafter be made use of for or in the darkening of the colour of worts or beer, or any melasses, honey, liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, or opium, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, or opium, or any article or preparation to be used in worts or beer, for or as a substitute for malt or hops respec-

56 G.3. c.58. tively; and if any druggist or druggists, or vender or venders of, or dealer or dealers in drugs, or any chymist or chymists, or any other person or persons whatever, shall sell, send, or deliver, or cause, or procure, permit, or suffer to be sold, sent, or delivered to any licensed brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, knowing him, her, or them to be so licensed, or to be reputed to be so licensed, or shall sell, send, or deliver, or cause or procure to be sold, sent, or delivered to any other person or persons for or on account of, or in trust for, or for the use of any such brewer or brewers, or dealer or dealers, or retailer or retailers of beer, any liquor called or known by the name or description of, or sold as colouring, from whatever materials the same may have been made, or any other material or preparation, other than unground brown malt, for the purpose of darkening the colour of worts or beer, or any liquor or preparation such as has been heretofore used, or as shall hereafter be made use of for or in the darkening the colour of worts or beer, except as aforesaid, or any melasses, honey, liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, opium, or any article or preparation to be used in worts or beer for or as a substitute for malt or hops respectively; all such liquor called or known by the name or description of or sold as colouring, and material or preparation for the purpose aforesaid, and liquor and preparation used, or which shall hereafter be used for or in the darkening the colour of worts or beer, melasses, honey, liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, extract, or preparation of melasses, honey, liquorice, vitriol, quassia, coculus indiæ, grains of paradise, guinea pepper, opium, and article or preparation to be used for or as a substitute for malt or hops respectively, shall be forfeited, and the same respectively shall and may be seized by any officer or officers of excise, and the druggist or druggists, vender or venders of, or dealer or dealers in drugs, or chymist or chymists, or other person or persons whatever so offending, shall, for each and every such offence forfeit and lose the sum of *500l.*"

Penalty.

15 C.2. c.11. Time of delivering out. By stat. 15 *C.* 2. *c.* 11. § 11. No common brewer of beer or ale shall sell, deliver, or carry out any beer or ale to any of his customers, either in the whole cask or by the gallon, in any city, town corporate, or market town, before notice given to an officer of excise, but between three in the morning and nine in the evening from *March* 25th to *September* 29th; and between five in the morning and seven in the evening between *September* 29th and *March* 25th, on pain of 20*s.* a barrel. See 5 *G.*4. *c.*54. § 11. *post.* p. 77.

7 & 8 W. c.30. Mixing after delivered out. By stat. 7 & 8 *W.* 3. *c.* 30. § 23. If any common brewer or innkeeper shall, on carrying out his drink, or after it is carried out, mix any small beer or small worts with any strong beer or strong ale on his dray, or in any victualler's cellar or other place, he shall forfeit *5l.*; and the gauger may taste the drink upon the dray, and also, upon request, may enter the cellar or other room in the possession of any innkeeper or victualler that shall receive any drink from a common brewer, and taste the drink in the same, and if the innkeeper or victualler shall refuse him to enter into his cellar

or other rooms, or to taste the drink in the same, he shall forfeit 5*l*. 7 & 8 W. c. 30.

By stat. 22 & 23 *C.* 2. *c.* 5. § 11. No retailer of beer or ale shall, after the receipt thereof from the common brewer, mix any beer, ale, or worts of extraordinary strength with any small beer, ale, or worts, in any vessel or tub containing three gallons or more, on pain to forfeit for every barrel so mixt double the duty of excise for strong beer or ale, and so proportionably for any greater quantity.

22 & 23 C. 2. c. 5. Mixing by the retailer.

And by stat. 43 *G.* 3. *c.* 69. § 12. reciting that whereas it is expedient that the quantities to be returned as and for a barrel of beer or ale brewed by the common brewer, and the allowances for waste, should be in all places the same; it is enacted, that after the 5th day of *July*, 1803, every 36 gallons of beer or ale brewed by the common brewers in *G. B.*, whether within the weekly bills of mortality, or without the same, taken according to the standard of the ale quart, four thereof to the gallon, in the exchequer, shall be reckoned and returned by the gauger or other officer of excise for a barrel of beer or ale.

43 G. 3. c. 69. Measure of the barrel of beer or ale.

Stat. 5 *G.* 4. *c.* 54. § 17. Whereas it is expedient that the duties on beer should be charged throughout *G. B.* by the same measure, every 36 gallons of beer taken either by gauge or measure shall throughout *G. B.* be reckoned and returned by the officers of excise for a barrel of beer, and the several rates of duty imposed in respect of beer shall be charged thereon accordingly, and so in proportion for any less quantity, and no beer shall be sold by any brewer, dealer, or retailer, at any other rate or quantity *per* barrel than the above quantity of 36 gallons, any law or usage to the contrary notwithstanding.

5 G. 4. c. 54.

By stat. 43 *G.* 3. *c.* 69. § 12. The allowances to be made in *G. B.* to the common brewer not selling beer, ale, or worts in any less quantity than a whole cask containing 4½ gallons, whether within or without the said limits, for waste by fillings and leakage, or otherwise, out of the returns by the gaugers or other officers, shall be three barrels upon every thirty-six barrels, both of strong beer or table beer and ale, and after that rate for any greater or less quantity.

43 G. 3. c. 69. Allowance for leakage, &c.

§ 13. The said allowance to the common brewer of three upon every thirty-six barrels of beer or ale shall be in full compensation for all waste or other losses whatsoever.

§ 14. And no beer or ale brewed by the common brewers in *G. B.* shall be sold by them at any other rate or quantity for the barrel than as aforesaid; provided that nothing herein shall extend to alter the quantity returned as and for a barrel of beer or ale, brewed by any victualler or retailer, or other person than the common brewer who sells or takes out beer or ale publicly or privately.

No beer or ale to be sold at any other rate by the common brewer; but not to extend to other brewers.

By 12 *C.* 2. *c.* 24. § 37. If any common brewer shall wittingly and willingly make a false entry, and be convicted thereof, he shall, over and above other penalties, forfeit the allowance for six months then next ensuing.

12 C. 2. c. 24.

But by stat. 25 *G.* 3. *c.* 73. § 1. Common brewers who shall sell beer, ale, or worts in a less quantity, at one time, than a whole cask containing 4½ gallons, shall be deemed to sell by retail, and shall not be entitled to any allowance whatsoever.

25 G. 3. c. 73. Not to be sold in less quantities than 4½ gallons.

32 G.3. c.8.

By stat. 32 *G.* 3. *c.* 8. § 1. Every common brewer who shall sell beer, ale, or worts in any less quantity, at one time, than in a whole cask containing 4½ gallons, shall forfeit 50*l.* for every such offence.

42 G.3. c.38. Nor at a higher price than 1½d. per quart, without licence, on penalty of 50*l.*

And by stat. 42 *G.* 3. *c.* 38. § 18. If any person, not being a common brewer, shall retail beer at a higher price than after the rate of one penny halfpenny the quart, alehouse measure, without obtaining a licence as a common alehouse-keeper, he shall forfeit 50*l.* over and above any other penalty for selling beer or ale without such licence.

7 & 8 W. c. 30. Notes of the gauge, and charges to be left.

By stat. 7&8 *W.* 3. *c.* 30. § 46. Notes of every gauge, signed by the guagers, containing the inches and tenths of the backs, and wants of the tuns, and quality of the liquors, shall be left by them with the common brewers of ale or beer, or some servant (if demanded) at the time of taking the gauges, on pain of 40*s.*

And by § 25. The gauger shall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their servants, a true copy under his hand of each respective *charge* by him made, containing the quantity and quality of the liquors by him charged in such week; and if he shall neglect or refuse (after demand in writing, 12 *G.* *c.* 28. § 30.) to leave such copy, or shall charge such person more than such copy contains, he shall forfeit 10*l.*

42 G.3. c.38. Overcharge of excise officer, how dischargeable.

By stat. 42 *G.* 3. *c.* 38. § 14. Upon complaint made before the commissioners of excise or justices of the peace on the behalf of any common brewer on account of any overcharge made on him by any officer of excise, in respect of any table beer charged and returned by such officer as strong beer, it shall not be lawful for such commissioners or justices to discharge such brewer of such charge, or any part thereof, unless proof be made before them on oath by a credible witness to their satisfaction that the whole quantity of the table beer made in the guile or brewing to which such complaint refers, or at least the greater part thereof, was actually sold at a price not exceeding 16*s.* the barrel, exclusive of the duty, nor unless the names and residences of the party to whom such beer, or the greater part thereof, was sold and delivered, and the days of delivery, be given on the oath of such witness or witnesses. (See stat. 3 *G.* 4. *c.* 18. § 11. *ante*).

12 C.2. c.24. Entry and payment of duties.

By stat 12 *C.* 2. *c.* 24. § 29. All common brewers of beer and ale shall once in every week, and all innkeepers, alehouse-keepers, victuallers, and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making, or retailing the same, shall once in every month make entries at the excise office of all such liquors brewed, made, or retailed in that week and month respectively.

§ 30. All such common brewers who do not once a week make due entries, shall forfeit 10*l.*; and every such innkeeper who doth not make true entries once a month, shall forfeit 5*l.*; and every alehouse-keeper, victualler, or other retailer who does not once a month make due entries, shall forfeit 20*s.*

§ 31. Every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty; and every innkeeper, alehouse-keeper, victualler, or other retailer who shall not pay within a

month after he made his entry, or ought to have made his entry, shall pay double value of the duty. (M.) 12 C. 2. c. 24.

§ 32. Provided that no such person shall be compelled to travel for making the said entries, or payment of the said duties, or other cause whatsoever touching the same, if he live in a market-town, out of the said town; if he live out of a market-town, then to no other place than to the next market-town to his habitation in the same county, on the market-day.

But by stat. 15 *C.* 2. *c.* 11. § 6. No common brewer shall be prosecuted for any forfeiture for any mis-entry or short entry, if he shall in one week after the delivery of the copy of the return made by the gauger, rectify his entry according to the said return, or otherwise discharge himself. 15 C. 2. c. 11.

But by stat. 1 *W.&M. sess.* 1. *c.* 24. § 10. No brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment, if it shall appear by the evidence that he did not *bonâ fide* shew to the gauger all the beer, ale, and worts of each respective guile for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gauger. 1 W. & M. sess. 1. c. 24.

The 42 *G.* 3. *c.* 38. regulates the price, &c. of table beer, and repeals the 22 *G.* 3. *c.* 68. as to table beer. 42 G. 3. c. 38.

§ 17. Every dealer in and seller of table beer, selling, delivering, or disposing of more than one gallon at one time, shall make entry at the excise of all places for storing, laying, keeping, or selling such beer, and shall be subject to the laws of excise as victuallers and retailers of ale are; and if any such shall not make such entry, he shall forfeit 50*l.*

§ 13. And if any common brewer shall sell, or permit to be sold, any beer made as and for table beer, and charged with duty as such, at any higher price than 16*s.* the barrel, (exclusive of the duties,) either as to the price of the beer, or under pretence of carriage, credit, or interest of money or other pretence, he shall for each offence forfeit 100*l.* Penalty for selling table beer at more than the barrel price, exclusive of duty.

§ 9. When such table beer shall be cleansed into casks, such brewer shall mark each cask on the most conspicuous part with the letter T. of the length of four inches at least, to denote that the beer therein is such table beer as aforesaid; and in case of neglect, or if any common brewer shall not continue such mark, or cause the same to remain and continue visible and distinct on every such cask, during the whole time the same shall remain in his possession, and until the same shall be delivered into the possession of the person to whom the same shall be sold or delivered for consumption, or otherwise, he shall forfeit 50*l.* for every such cask on which such mark shall not be put and continued. When table beer is cleansed into casks, the same to be marked,

§ 10. Every such cask shall be kept in a separate place from all other casks of beer or ale, on pain of forfeiting 50*l.* and kept separate.

§ 11. No table beer shall be put into or tunned, cleansed, or stored in any cask, vat, or other vessel, exceeding the content or size of a butt or pipe of three barrels, on forfeiture, for each offence, of 100*l.*: provided, that nothing herein shall prevent any common brewer, upon twenty-four hours' notice thereof in writing No table beer to be put into a vessel of more than three barrels, on penalty of 100*l.* except

42 G. 3. c. 38. — to keep the vessel in a state to receive strong beer. to the proper officer of excise, from putting into any vessel of a larger size or content a sufficient quantity of table beer, not exceeding two barrels for every 100 barrels of the full content of such tun or vessel, to preserve such vessel in a proper condition for receiving or storing strong beer; and provided also that no strong beer shall be put into any such large vessel until all such table beer shall have been taken out of the same, in presence of and to the satisfaction of the proper officer of excise.

12 C. 2. c. 24. Exception of selling in fairs. But by stat. 12 *C.* 2. *c.* 24. § 39. If any person shall brew and sell by retail any small quantities of beer or ale in any fair, who is not otherwise a common brewer or retailer thereof, and shall before such selling and retailing, pay the excise for the same; he shall be freed from all penalties relating to such entries and the like.

42 G. 3. c. 38. No exporter to keep table beer in any entered place for strong beer. Penalty. By stat. 42 *G.* 3. *c.* 38. § 19. No entered dealer in beer, being an exporter of beer or ale, shall have or keep any table beer in any cellar, or other place entered for laying or keeping strong beer; and if any such dealer shall have or keep any table beer in any such cellar or other place, the person so offending shall for every offence forfeit 50*l.*

Compounding. § 40. The commissioners and sub-commissioners may compound with innkeepers and others for the duties.

15 C. 2. c. 11. But by stat. 15 *C.* 2. *c.* 11. § 14. No person who hath compounded shall, during the term of such composition, suffer any beer or ale to be brewed within his brewhouse for any other common brewer, without first giving notice to the commissioners or sub-commissioners, and forthwith paying down the excise thereof; upon pain that as well the brewer who shall brew the same, as the brewer for whom it shall be brewed, shall forfeit 5*l.* for every barrel.

15 C. 2. c. 11. 28 G. 3. c. 37. Utensils liable to the penalties and duties. By stat. 15 *C.* 2. *c.* 11. § 13. and 28 *G.* 3. *c.* 37. § 21. All brewing vessels and utensils for brewing, into whose hands soever they shall come, and by what conveyance or title soever they be claimed, shall be subject to all the debts and duties of excise in arrear for any beer or ale made in the said brewhouse; and shall also be subject to all penalties and forfeitures against the laws of excise; and it shall be lawful to levy debts and penalties, and use such proceedings against the utensils therein contained, as it may be lawful to do in case the debtor or offender using the said utensils had been the real owner thereof.

Power of the justices. All fines, penalties, and forfeitures, shall be sued for, recovered, or mitigated, as by the laws of excise, or in the courts at *Westminster;* half to the king and half to him that shall sue. *Vide* 24 *G.* 3. *sess.* 2. *c.* 41. § 11.; 27 *G.* 3. *c.* 13. § 5. 38.; 42 *G.* 3. *c.* 38. § 36.; 55 *G.* 3. *c.* 30. § 4.; 56 *G.* 3. *c.* 58. § 4.; 1 & 2 *G.* 4. *c.* 22. § 6.; 4 *G.* 4. *c.* 51.

1 W. & M. sess. 1. c. 24. 12 & 13 W. & M. c. 11. By stat. 1 *W. & M. sess.* 1. *c.* 24. § 16. 12 & 13 *W. & M. c.* 11. § 17. No information shall be brought against any common brewer or alehouse-keeper or cyder-maker, for any mis-entry or offence, but within three months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling-house, within a week after laying and entering the information.

4 G. 4. c. 51. By stat. 4 *G.* 4. *c.* 51. intituled *An Act to encourage the Consumption of Beer; and to amend the Laws for securing the Excise Duties*

thereon, § 1. after reciting that strong beer or ale, or beer or ale above 16*s*. the barrel, exclusive of the duty by law imposed on such beer or ale, and not being twopenny ale mentioned and described in the seventh article of the Treaty of Union with *Scotland*, (see 5 *A. c.* 8.) which shall be brewed in *G. B.* by any common brewer, or other person or persons who shall sell or tap out beer or ale publicly or privately, is by law subject to a duty of excise of 10*s*. for every barrel thereof; and table beer, or beer or ale of 16*s*. the barrel or under, exclusive of the duty by law imposed thereon, which shall be brewed in *G. B.* by any common brewer, or other person or persons who shall sell or tap out beer or ale publicly or privately, is subject to an excise duty of 2*s*. for every barrel thereof: and that it is expedient, *for supplying the public with beer or ale of an intermediate strength between strong beer and table beer, and subject to a proportionate excise duty*, to make such provision as herein-after mentioned: it is enacted, that from and after the 5th day of *July*, 1823, it shall be lawful for any person or persons, under the licences, rules, conditions, and restrictions hereinafter contained, to brew for sale and sell such beer or ale as is hereinafter mentioned, upon payment of an excise duty for the same at and after the following rate; (that is to say,) for every barrel, containing thirty-six gallons ale measure, of such beer or ale as is hereinafter mentioned, which shall be brewed in *G. B.*, to be paid by the brewer thereof, the sum of 5*s*., and so in proportion for any greater or less quantity thereof than a barrel.

4 G.4. c.51. Beer of intermediate strength between *strong* and *table* beer.

May be brewed and sold under the provisions of this act, subject to duty of 5*s*. per barrel.

§ 2. All such beer or ale as shall be brewed or sold in *G. B.* under the provisions of this act, shall be brewed in the proportion of not less than five barrels, containing thirty-six gallons ale measure each, of such beer or ale, nor more than five and a half of such barrels, from each quarter of malt which shall be used for the purpose of brewing such beer or ale, and every such brewer shall be charged by the proper officer with such duty as aforesaid, after the rate of five such barrels at the least, for every quarter of malt so used by him in brewing, or which shall be found at any time to be deficient in, and on taking an account of his malt stock, as hereinafter mentioned, and for so much more beer, not exceeding five barrels and a half for every quarter of malt so used, as such officer shall find on his survey to have been made by any such brewer, and so in proportion for any greater or less quantity; and all such beer or ale which shall be sold in any quantity at one time of nine gallons, or one quarter of such barrel or upwards, shall be sold at a rate not exceeding 27*s*. the barrel, and so in proportion for any quantity greater or less than a barrel; and all such beer or ale which shall be sold in any quantity at one time of less than nine gallons, shall be sold at a price not exceeding 10*d*. the gallon, and so in proportion for any quantity greater or less than a gallon; and if any person who shall make entry to brew such beer or ale, shall brew or suffer any beer or ale to be brewed of any greater or less strength or quantity than in the proportions aforesaid, of not less than five barrels, containing thirty-six gallons ale measure each, or more than five and a half of such barrels, from every quarter of malt, all such beer or ale brewed of greater strength shall be charged with duty at the rate of 10*s*. for every such barrel thereof, and so in proportion for any quantity greater or less than a barrel; and if any

Beer to be brewed in the proportion of five barrels of 36 gallons, and five and a half of such barrels for every quarter of malt.

Beer may be sold in quantities of nine gallons, at the rate of 27*s*. per barrel; and if sold in any less quantity, 10*d*. per gallon.

Beer of a greater strength shall be charged with duty of 10*s*. per barrel.

4 G. 4. c. 51.

If brewed of any other materials than herein described, the beer shall be forfeited.

such person shall brew any porter, or shall use, or cause, or permit, or suffer to be used, in the brewing of any such beer or ale as aforesaid, any other material or ingredients than water, malt, hops, and yeast, or put into or mix with any such beer or ale, or the wort or worts thereof, any water, or any other material or ingredient than hops and the necessary quantity of yeast and fining for such beer, ale, or worts, all such porter, and all such beer, ale, and worts shall be forfeited, and may be seized by any officer or officers of excise; and every such person or persons so offending, either by brewing, or causing, permitting, or suffering to be brewed, any beer or ale of greater or less strength than as aforesaid, or by brewing any porter, or by adulterating any such beer, ale, or worts, shall for every such offence forfeit the sum of 200*l.*; and if any person shall sell, or cause to be sold, any beer or ale brewed under the provisions of this act in any quantity at one time of nine gallons, or one quarter of such barrel thereof as aforesaid, or upwards, at a greater or higher rate or price than 27*s.* the barrel, and so in proportion for any greater or less quantity than a barrel, or any quantity of such beer or ale at one time, less than nine gallons, at a higher price than 10*d.* the gallon, and so in proportion, every such person shall for every such offence forfeit the sum of 50*l.*

Offender shall forfeit 200*l.*

Persons selling beer at a higher price than above stated shall forfeit 50*l.*

When malt or hops rise in price, the treasury may authorize the advance of price of beer or ale.

§ 3. Provided always, that whenever malt or hops shall rise to and be of such price as, in the judgment of the commissioners of H. M.'s treasury, to require that the brewers and sellers of beer or ale brewed or sold under the provisions of this act should be allowed to sell such beer or ale at a higher rate or higher rates, price or prices, than are by this act specified, it shall be lawful for the commissioners of H. M.'s treasury, by any warrant or order signed by any three of them, to authorize the brewers of beer or ale under the provisions of this act, or the retailers thereof, whilst the price of malt or hops shall be so advanced, to sell such beer or ale at such higher rate or price, as shall be limited and expressed in such warrant or order, without such brewer or other person incurring any penalty or forfeiture in respect of such sale, during the time that any such warrant or order shall be in force.

All persons brewing such beer to take out such licences as common brewers of strong beer, and be subject to the same regulations.

§ 4. Every person who shall be desirous of brewing beer or ale under this act, and shall make entry of any house or premises for that purpose as herein-after mentioned, shall, before he shall begin to brew any such beer or ale, take out and pay for an excise licence authorizing such person to brew such beer or ale; and every such person so making entry shall be subject to, and shall pay duty for every such licence at the same rate and proportion which is by law imposed on licences to common brewers of strong beer (*a*); and every such licence shall be granted at and for such times, and under, subject, and according to the several laws and regulations relating to licences to be granted to common brewers of strong beer; and every such person so making entry and taking out a licence to brew under the provisions of this act, shall in all re-

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5 G. 4. c. 54.

(*a*) But by stat. 5 *G.* 4. *c.* 54. § 1. All the duties on excise licences taken out by sellers or retailers of beer under stat. 4 *G.* 4. *c.* 51. are to cease from 10th *Oct.* 1824, except as to arrears and penalties incurred before and remaining unpaid on that day. By § 2. new duties are imposed, which see *supra*.

spects be subject to the same rules, regulations, restrictions, conditions, fines, penalties, and forfeitures (except so far as is expressly altered by this act) to which common brewers of strong beer are subject by any act or acts in force. 4 G.4. c.51.

No allowances made to such brewers.

§ 5. No brewer who shall make entry and take out a licence to brew under the provisions of this act shall be entitled to any abatement of the duty hereby imposed, or on the return of such duty, for waste by fillings and leakage, or any other consideration, or shall remove to, take, or receive at his premises entered for brewing beer or ale under this act, any other beer, ale, or porter whatsoever; and it shall be lawful for any such brewer to sell and retail such beer or ale at and from such entered premises, where the same has been brewed, at such prices as aforesaid, in any quantity, not being to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by such brewer, or in which he shall have any interest or concern; and if any brewer of such beer or ale shall remove to, take, or receive, at his premises entered, &c., any other beer, ale, or porter whatsoever, or shall sell or retail any such beer or ale at any place other than as aforesaid, and not being a place duly entered for that purpose as herein-after mentioned, or to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by such brewer, or in which he shall have any interest or concern, every such brewer so offending shall, for each and every such offence, forfeit 100*l*.

Liberty to retail the beer on their premises, but no consumption shall be allowed thereon.

Penalty 100*l*.

Brewers of other beer to brew beer under this act, upon taking out a separate licence and subject to certain conditions, as to distances, &c.

§ 6. It shall be lawful for any person to brew any beer, ale, or porter under the provisions of any act in force before the passing of this act, and also to brew beer or ale under the provisions of this act, upon taking out separate licences for that purpose, without incurring any of the penalties imposed by this act for having in his possession for sale, at the same time, beer or ale brewed under this act, and also any other beer, ale, or porter: Provided always, that no brewer who shall make entry to brew under the provisions of this act, shall be a maltster, or interested in the making of malt, within the distance of one quarter of a mile in a direct line from the premises entered by him, for brewing beer or ale under the provisions of this act; and provided, that no such brewer who shall also be a brewer of other beer, ale, or porter, shall carry on, or be interested or concerned in carrying on such several breweries together, or within the distance of 200 yards in a direct line of each other; or shall at the same time have, or take into his possession, any beer or ale brewed under this act, and also any other beer, ale, or porter brewed under the provisions of any other act, in the same place, room, storehouse, or cellar, or in any separate places, rooms, storehouses, or cellars, at a less distance from each other than 200 yards in a direct line; and if any person shall brew any beer or ale under this act, and also any other beer, ale, or porter, without taking out such separate licences, or shall brew any beer or ale under this act, and shall at the same time be a maltster, or be interested or concerned in the making of malt, within the distance of a quarter of a mile in a direct line from the premises by him entered for brewing beer or ale under this act, or shall brew any beer or ale under this act,

4 G.4. c.51. and also be a brewer of any other beer, ale, or porter, and shall carry on, or be interested or concerned in carrying on such several breweries together, or within the distance of 200 yards in a direct line of each other, or shall at the same time have, or take into his possession, any beer or ale brewed under this act, and also any other beer, ale, or porter at the same place, room, storehouse, or cellar, or at any separate places, rooms, storehouses, or cellars, within the distance of 200 yards in a direct line of each other; every such person or persons so offending shall for every euch offence forfeit the sum of 200*l.*: and all such beer found in the custody or possession of such person or persons so offending shall be forfeited, and seized by any officer or officers of excise.

Penalty 200*l.*

Sellers at other places than the brewery to be licensed.

§ 7. It shall be lawful for all persons to make entry as hereinafter mentioned, of any place, room, storehouse, cellar, shop, house, or outhouse, for the sale and retail of beer or ale brewed under the provisions of this act, detached from the entered premises where the same is brewed, and to take out an excise licence under the provisions of this act, authorising such persons to sell by retail, under the conditions and restrictions herein contained, any beer or ale brewed under the provisions of this act; which licence shall be granted in manner hereinafter mentioned; (that is to say), if taken out within the limits of the chief office of excise in *London*, under the hands and seals of two or more of the commissioners of excise, or of such persons as they shall direct or employ for that purpose; and if any such licence shall be taken out in any part of *England* not within the said limits, the same shall be granted under the hands and seals of the collectors and supervisors of excise within their respective collections and districts; and in case any such licence shall be taken out within the limits of the city of *Edinburgh*, the same shall be granted under the hands and seals of two commissioners of excise in *Scotland;* or if out of the said limits of the city of *Edinburgh*, then under the hands and seals of the several collectors and supervisors of excise in *Scotland*, within their respective collections and districts; and the said commissioners of excise in *England* and *Scotland*, and the person to be directed or employed by the said commissioners, and all such collectors and supervisors, are hereby authorised and required to grant such licences to the persons who shall apply for the same, on the person or persons so applying first paying for such licence a duty of 21*s.* to be (§ 4.) under the management of the excise, and levied as former licence duties of excise, except where altered by this act, and (§ 5.) to be carried to the consolidated fund.

Licences where to be taken out.

5 G.4. c.54.

When licences shall expire and be renewed.

And by 5 *G.*4. *c.*54. § 13. every licence now or hereafter granted, the duties whereon are hereby repealed, (*ante*, 96. n. (*a*)) shall expire on the 10th *October* in each year; and every common brewer or brewers who shall take out or renew his or their licence for brewing beer in *G. B.* on or before the said 10th *October*, and expiring on that day, shall pay duty for the same for such time or part of the year only as shall be between the day when such licence was or ought to have been renewed or taken out for that purpose and the said 10th *October*, and shall then renew such licence under this act, to expire on 10th *October*, 1825.

By § 12. The powers of former acts relating to licences to be taken out by brewers and retailers of beer, are continued.

Stat. 4 *G*.4. *c*.51. § 7. provides that no such licence shall authorise the person or persons taking out the same to sell any beer or ale brewed under the provisions of this act, to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by the person or persons taking out such licence, or in which he or they shall have any concern, or to sell, deal in, or retail any other beer, or ale, or porter whatsoever, or shall entitle such person or persons to any licence to sell or retail cyder, wine, or spirits.

4 G.4. c.51. But such licence not to authorize the selling of beer to be drank on the premises.

§ 8. No such person shall sell any beer or ale brewed under the provisions of this act, in any place, room, storehouse, cellar, shop, house, or outhouse, whether entered or not entered for that purpose, detached from the entered premises where the same was brewed, after the expiration of such his excise retail licence; and every such person shall take out a fresh retail licence for that purpose in the manner hereinbefore directed (*a*), before the expiration of such former retail licence, and so in like manner renew every such licence from year to year; and if any person shall sell any beer or ale, brewed under the provisions of this act, at any place, room, storehouse, cellar, shop, house, or outhouse detached from the entered premises where the same was brewed, without first taking out an excise retail licence authorising him so to do, or without renewing the same as is herein in that behalf directed, or shall sell any such beer or ale to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by the person taking out such licence, or in which he shall have any interest or concern, or shall sell, deal in, or retail any other beer, or ale or porter whatsoever, every such person shall for every such offence forfeit the sum of 50*l*.: Provided always, that persons trading in partnership and in one house or shop only, shall not be obliged to take out more than one licence in any one year for selling any such beer or ale brewed under the provisions of this act, and no one licence which shall be granted by virtue of this act shall authorise any person to sell any such beer or ale, brewed under the provisions of this act, in any other place, room, storehouse, cellar, shop, house, or outhouse, than the place, room, storehouse, cellar, shop, house, or outhouse, whereof entry in writing shall be made at the office of excise, in the name or names of such person or persons for selling such beer or ale brewed under the provisions of this act, at the time of granting such licence, and in respect whereof such licence shall be granted.

Licences to be renewed. Penalty on retailing without licence, or without renewing the same.

Penalty on retailing beer without licence, or selling to be drank on the premises, &c. 50*l*.

One licence sufficient for persons trading in partnership.

§ 9. Such of the duties by this act imposed as shall arise in *England*, shall be under the management of the commissioners of excise in *England* for the time being; and such thereof as shall arise in *Scotland* shall be under the management of the commissioners of excise in *Scotland*. [Boards of customs in *G.B.* and *Ireland* consolidated by stat. 4 *G*.4. *c*.23.]

Duties to be under the management of the commissioners of excise.

§ 10. The several duties hereby imposed and made payable shall be raised, levied, collected, answered, paid, recovered, and adjudged, mitigated, and allowed, in like manner as any other duties of excise on beer (except so far as is expressly

Duties how to be levied.

(*a*) See 24 *G*.3. *sess*.2. *c*.41. § 7. *supra*, p. 74.

4 G.4. c.61. altered by this act); and the brewers, retailers, and persons respectively before mentioned, shall be subject to all the conditions, regulations, rules, restrictions, and forfeitures, to which brewers, dealers in, and retailers of beer, are subject (except as aforesaid).

Duties to be carried to the consolidated fund.

§ 11. All the monies arising by the duties and several sums by this act imposed and made payable shall be paid into H. M.'s exchequer, and carried to the consolidated fund.

In the entry of premises, places and utensils shall be distinguished by letters and numbers.

§ 12. Every person who shall make, or shall be by law required to make entry of any building, place, or utensil for the brewing or sale of beer or ale under the provisions of this act, or for the purpose of carrying on any trade or business subject to the survey of the officers of excise, shall in every such entry distinguish and describe every such building, place, and utensil, by a particular letter or number, and shall paint such respective letter or number in a large and distinct character upon some convenient and conspicuous part of the walls or doors of every such building or place, and upon some convenient and conspicuous part of every such utensil, and keep and continue the same so painted, and from time to time, when occasion may require, or when requested by the supervisors of excise of the district where situated, renew the same so long as the entry thereof remains uncancelled, so that such letter or number so painted may be easily and readily known by the officers of excise attending to survey the same: and wherever any such person or persons shall use or employ in his or their entered buildings or places any fixed pipe or pipes, he or they shall, at the time of making his or their entry of the places and utensils as aforesaid, deliver with such entry, and as part thereof, a drawing or description, distinctly shewing the course, direction, construction, and use of all and every such pipe and pipes, and of all and every branch and branches thereof, and of every cock and cocks thereon, together with the place or places, and utensil or utensils respectively from and to or with which the same lead or communicate; and if any building, place, or utensil shall at any time be found to be used by any person for any such purpose, without being so entered, described, or distinguished, or without such letter or number being so distinctly painted and continued thereon, or any pipe or pipes be found without being so shewn in such drawing, or so described as aforesaid, or different from or disagreeing with such drawing or description, every such person or persons using the same shall for every such offence forfeit, over and above all other penalties, the sum of 200*l.*: Provided always, that no person or persons whatsoever shall newly erect, set up, enter, or shall make use of any house or place whatsoever in *G.B.* for the brewing of beer or ale under the provisions of this act, within the distance of 100 yards in a direct line from any house or place which for three months immediately preceding shall have been and shall be at that time licensed, entered, and used for the purpose of brewing any other beer, ale, or porter for sale, under the provisions of any other act; nor shall any person or persons whatsoever newly erect, set up, enter, or make use of any place or house whatsoever in *G. B.* for brewing or making any other beer, ale, or porter for sale, within the distance of 200 yards in a direct line from any house or place which for three months immediately preceding shall have been and shall at that time be licensed, entered, and used for the purpose of brewing beer or ale under the provisions of this act; nor shall

Buildings used and not entered, or distinguished as above, offender to forfeit 200*l.*

No houses for the brewing or sale of beer under this act, shall be used within a certain distance of any house or premises used for brewing or selling any other beer, and vice versa.

any person or persons newly erect, set up, enter, or make use of any place, room, storehouse, cellar, shop, house, or outhouse within *G.B.* for selling or retailing any beer or ale brewed under the provisions of this act, within the distance of 20 yards in a direct line from any house or premises which for three months immediately preceding shall have been and shall at that time be licensed, entered, and used for selling or retailing any other beer, ale, or porter; nor shall any person or persons newly erect, set up, enter, or make use of any house or premises for selling or retailing any other bee , ale, or porter, within the distance of 20 yards of any place, room, storehouse, cellar, shop, house, or outhouse, which for three months immediately preceding shall have been and shall at that time be licensed, entered, and used for the sale and retail of beer or ale brewed under the provisions of this act; on pain of the person or persons so offending forfeiting, in each and every such case, the sum of *50l.* for every week that such house or place shall be erected, set up, entered, or used respectively as aforesaid, contrary to this act; and all and every entries or entry of any such house or premises so entered and made use of contrary to the true intent and meaning of this act, shall be null and void.

4 G.4. c.51.

Penalty, *50l.* for every week such houses shall be used.

§ 13. Every person who shall make entry of any buildings or premises for brewing beer or ale under the provisions of this act, shall specify in such entry, the room, storehouse, or place, rooms, storehouses, or places, in which he shall intend to store the malt for such brewing, and shall, when and so often as he shall receive any malt, store, lodge and place the same in one or more of such entered rooms, storehouses, or other places, and shall use or employ no other malt, ground or unground, for brewing beer or ale under this act, than such as shall be taken by him, from one or more of such entered rooms, storehouses, or places for that purpose, and of which entry shall on the same day be made in the book herein-after mentioned; and if any such person shall not make such entry as aforesaid, or specify and distinguish every such room, storehouse, or place as aforesaid, or shall receive or take into, or have in his possession, any malt, ground or unground, for brewing, without such malt, ground or unground, being lodged, put, or placed by him, her, or them, in one or more of such rooms, storehouses, or places, entered for that purpose, and entered in such book as herein-after mentioned, or shall use any malt, ground or unground, in or for such brewing as aforesaid, without taking the same from one or more of such entered rooms, storehouses, or other places, and making entry thereof in such book as is hereinafter mentioned, every such person or persons so offending as aforesaid, shall forfeit for every such offence the sum of *200l.*

Brewer to enter places for keeping malt.

Penalty on receiving into or taking malt from places not entered, *200l.*

§ 14. Every brewer of beer or ale under this act shall keep a book to be delivered to him by the proper officer of excise, which book shall be prepared with distinct columns for entering accounts of all the malt which shall be received by any such brewer, to be used, and which shall be used by him, in the brewing of such beer or ale; and every such brewer shall, under the date and on the same day on which he shall receive any malt into his possession for brewing, write and enter, or cause to be written and entered in such book and in the proper columns, a true and par-

The different quantities of malt received and used by such brewers to be entered in a book kept by them.

G.4. c.51.

ticular account of the number of bushels of malt, distinguishing the same whether ground or unground, which he shall receive into his possession for brewing as aforesaid; and shall also write and enter the christian and surnames, and places of abode of the persons of whom such malt was purchased, or from whom such malt was received; and shall also write and enter an account of the quantity of such malt in bushels, and distinguishing whether ground or unground, which shall from time to time be used at such brewery in the brewing or making of such beer or ale, and make every such last-mentioned entry in such book, under the date and on the same day in which such malt was so used; and if any such brewer shall neglect or refuse to make or cause to be made any such entry or entries, or shall cancel, obliterate, or alter, or cause or suffer to be cancelled, obliterated, or altered, any such entry or entries, or shall make any untrue entry or entries therein, or shall at any time withhold, conceal, or make away with any such book or any part thereof, every such brewer or brewers so offending shall for every such offence forfeit the sum of 100*l*.

Neglect of entry, &c. 100*l*.

Books to be open to inspection of officers.

§ 15. All such books shall at all times be produced to and left open to the free inspection of the proper officers of excise, who shall be permitted to examine and cast up, and make copies or extracts from the entries contained therein, and to insert therein the time of such inspection, and sign their names thereto, and to take away any such book and deliver any such trader a new book of a similar kind; and if any person shall by any act, matter, or thing, or by any art or contrivance, obstruct or hinder, or cause or permit or suffer to be obstructed or hindered, any officer of excise therein, or in the performance and execution of any of the powers and authorities by this act given, or of his duty in respect thereof, every person and persons so offending, shall for every such offence forfeit the sum of 200*l*.

Obstruction to officers, 200*l*.

Malt in stock to be laid regularly and even, to enable the officers to gauge the same.

§ 16. Every such brewer shall, when and so often as thereto required by any officer of excise, cast or place all the malt in his possession, in such regular form as may enable the officer of excise conveniently to gauge and ascertain the true quantity thereof; and if upon such admeasurement the quantity of malt then in stock shall be found to disagree with the quantity which such brewer ought to have in his possession, according to the true balance drawn from casting up and adjusting such book and the entries therein, and allowing for so much as shall in and by the aforesaid book and the entries therein appear to have been used for the purpose of brewing such beer as aforesaid, then every such brewer, the quantity of whose malt then in stock shall be found so to disagree, or who, upon being thereunto required as aforesaid, shall neglect or refuse to cast or place such malt as aforesaid in his, her, or their custody or possession, in or unto such regular form as aforesaid, shall for every such offence forfeit the sum of 200*l*.

Penalty, 200*l*.

Book to be filled up before cast up by officer.

§ 17. Every brewer shall, before the officers take any such account of malt as aforesaid, be required by the proper officer, and be permitted to make due entries in such book of all malt which he may have received into his possession, or may have used in the brewing of beer in the course of the day in which such account is proposed or intended to be taken; and if any dispute shall arise between any such brewer and the officer of excise re-

Brewer may require malt in

specting the true quantity of malt in stock so taken an account of as aforesaid, such brewer shall have the option of and be allowed immediately to measure the same in the presence of such officer by a just *Winchester* bushel measure, to be provided by such brewer, and the quantity ascertained by such admeasurement shall be taken to be the true quantity of the malt in stock in the possession of such brewer.

4 G.4. c.51.

Stock to be measured if he disputes the accuracy of the officer's gauge.

§ 18. On every brewing by any brewer under the provisions of this act, the whole of the worts made on and by such brewing shall be collected and mixed together by such brewer, and made of one and the same quality, before the same or any part thereof shall be cleansed, removed, or run from the fermenting tun; and no such beer or ale shall be put into or tunned, cleansed, kept, or stored in any cask, vat, or other vessel exceeding the content or size of a butt or pipe of three barrels; and before any such cask, vat, or other vessel shall be used for any such purpose, the same shall be entered at the proper office of excise, and be truly gauged and inched to the satisfaction of the proper officer or officers of excise; and if any such brewer shall on any brewing not collect and mix together the whole of the worts made on and by such brewing, and make the same of one and the same quality, before the same or any part thereof is cleansed, removed, or run from the fermenting tun, or shall put into, or tun, cleanse, keep, or store any such beer or ale in any cask, vat, or other vessel exceeding such size as aforesaid, or shall make use of the same for any such purpose before the same have been entered, gauged, and inched as aforesaid, or afterwards alter by enlarging or diminishing the same without notice thereof to the proper officer, he shall for every such offence forfeit the sum of 100*l.*; and every cask, vat, or other vessel which shall have been so used as aforesaid, with all the beer contained therein, shall be forfeited, and may be seized by any officer of excise.

Beer not to be cleansed, kept, or stored, in any cask exceeding a butt, or before the same shall have been entered, inched, and gauged by the officer.

Penalty, 100*l.*, &c.

§ 19. When and as often as any beer or ale brewed under the provisions of this act shall be sold and sent out or delivered for consumption or otherwise, in any quantity of four gallons or upwards, such beer shall be sent out by the brewer in a cask on which shall be branded and permanently marked, in large and legible letters, the name of such brewer, and of the place or brewery where such beer was brewed, as well as the numeral figure five, of the length of four inches at the least, to denote the quality of such beer; and if any such brewer shall neglect or refuse to distinguish all such beer when sold and sent out, or delivered in any such quantity or quantities as aforesaid, in a cask which shall be so branded and marked, every such brewer or brewers shall for every such offence forfeit 50*l.*: provided always, that no such brewer shall be subject to any such penalty in any case where such beer shall be taken away by the person to whom the same may be sold, in any cask produced by him, and then filled for such purpose.

Brewers sending out such beer in quantities of 4 galls. or upwards, to send out same in a cask marked with the name of the trader, the brewery, and the figure 5.

Penalty 50*l.*

Casks produced by persons to whom beer is sold may be used.

§ 20. From and after the passing of this act, every brewer of beer or ale brewed under the provisions of this act, and every brewer of any other beer, ale, porter, or table beer for sale, shall, before he shall cleanse or remove or run any wort or beer from the fermenting tuns, or into any cask or vessel other than a known tun, cask, or vessel for fermenting beer, and specially entered by

Brewers of this and all other beer to make declaration in writing of the strength and quality of beer

4 G.4. c.51.

brewed, after every brewing.

such brewer for that purpose, make in writing, in the same book or paper in which every brewer of beer for sale is now by law required to give notice of every intended brewing, and of the quantity of malt by him intended to be used in such intended brewing, and opposite the entry of such notice, and the quantity of malt therein mentioned, a declaration of the whole length or quantity or quality of all the beer brewed by any such brewer at every such brewing, such declaration, when so made, being at the time signed by such brewer, or by his principal servant, the proper handwriting of such person being affixed and subscribed thereto; and if any such brewer shall refuse or neglect to make and enter such declaration in writing, or shall cancel, obliterate, or alter, or cause or suffer or permit to be cancelled, obliterated, or altered, any such declaration or entry; or if any such brewer or their or any of their servants shall make any untrue declaration or entry, or shall not at all times keep such book or paper in some public and open part of his entered premises, ready for the inspection of the officers of excise, or shall before such declaration or entry is so made, cleanse, remove, or run away any of the beer brewed at such brewing from the fermenting tuns, or into any cask or vessel other than a known tun, cask, or vessel for fermenting beer, and specially entered by such brewer, every brewer so offending shall for every such offence forfeit the sum of 200*l.*

Penalty, 200*l.*

Recovery and application of penalties.

§ 21. All fines, penalties, and forfeitures imposed by this act shall be sued for or mitigated by such ways as any fine, &c. may be sued for or mitigated by any law of excise, or by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, or in the court of exchequer in *Scotland*; and one moiety of every such fine, &c. shall be to H. M. and the other moiety to him or them who shall discover, or sue for the same.

Commencement of act.

§ 22. This act shall, where no special day is mentioned for that purpose, commence, from the 5th day of *July*, 1823.

§ IV. (2.) Things sold by Auction.

[17 G.3. c.50.—19 G.3. c.56.—28 G.3. c.37.—29 G.3. c.63.—30 G.3. c.26.—32 G.3. c.11.—c.41.—38 G.3. c.54.—41 G.3. c.91.—41 G.3. U.K. c.42.—42 G.3. c.93.—43 G.3. c.69.—43 G.3. c.130.—45 G.3. c.30.—51 G.3. c.95.—55 G.3. c.30.—c.142.—59 G.3. c.32.—c.54.—3 G.4. c.27.—5 G.4. c.75.]

By stat. 17 *G.3. c.*50. Several duties were imposed on estates and goods sold by auction; which act is repealed by stat. 19 *G.3. c.*56. so far as it concerns the licensing of auctioneers, and collecting and managing the duties; which acts, taken together, seem to enact as follows:

19 G.3. c.56.
Auctioneer to be licensed.

By stat. 19 *G.3. c.*56. § 3. No person who shall exercise the trade or business of an auctioneer, or seller by commission, at any sale of any estate, goods, or effects whatsoever, by outcry, knocking down of hammer, by candle, lot, parcel, or any other mode of sale at auction, or whereby the highest bidder is deemed to be the purchaser, or who shall act in such capacity, shall deal in or sell any estate, goods, or effects whatsoever, by public sale, or otherwise, by way of auction as aforesaid, without taking out a licence; which, if it be *within the bills of mortality*, shall be granted by the commissioners of excise, or such person as they shall appoint; and elsewhere by the collectors and supervisors

within their several collections and districts, under their hands and seals. 19 G.3. c.56.

In which licence shall be set forth the true name and place of abode of the person taking out the same. *Id.*

And for the said licence shall be paid, immediately on the taking out thereof, the sum of 6*s.* over and besides any other duties or payments for trading in or vending any gold or silver plate, or otherwise, by 43 *G.*3. *c.*69. *sch.* (A.) and the further sum of 6*s.* by 55 *G.*3. *c.*30. (*a*) 43 G.3. c.69. 55 G.3. c.30.

And by stat. 19 *G.*3. *c.*56. § 4. If any person shall act without such licence, he shall forfeit 100*l.* if the offence be within the bills of mortality; and elsewhere, 50*l.* 19 G.3. c.56.

The said licence shall be renewed annually, ten days at least before the expiration of the former. *Id.*

By stats. 42 *G.*3. *c.*93. § 14. and 43 *G.*3. *c.*130. § 1. Every person, who shall exercise the trade of an auctioneer or seller by commission, within the limits of the chief office in *London*, shall, when he receives his licence, give bond to the king, with two sureties, himself in 1000*l.* and his sureties in 200*l.* each; (out of the bills the bond to be in 50*l.* penalty) that he will account for sales and pay the duty as hereinafter directed. 42 G.3. c.93. 43 G.3. c.130. Auctioneer to give security to account, &c.

And every person exercising the said trade in any part of *G. B.* without the said limits, shall give security by bond as aforesaid; himself in 500*l.* and two securities in 50*l.* each. 19 *G.* 3. *c.* 56. § 8. 42 *G.* 3. *c.* 93. § 15. 19 G.3. c.56. 42 G.3. c.69.

By stats. 43 *G.* 3. *c.* 69. 45 *G.* 3. *c.* 30. and 55 *G.* 3. *c.* 142. duties are imposed upon the proceeds of sales by auction, *viz.* Duties.

	£	s.	d.	
55 *G.*3. *c.* 142. For every 20*s.* of the purchase money arising or payable by virtue of any sale at auction in *G. B.*, for the benefit of the growers or first purchasers respectively, of any sheeps' wool, the growth or produce of any part of the *U. K.* - - -	0	0	2	55 G.3. c.142.
43 *G.* 3. *c.* 69. 6*d.* — 45 *G.* 3. *c.* 30. 1*d.* — For every 20*s.* of the purchase money arising or payable by virtue of any sale at auction in *G. B.*, of any interest, in possession or reversion, in any freehold, customary, copyhold, or leasehold lands, tenements, houses, or hereditaments, and any share or shares in the capital or joint stock of any corporation or chartered company, and of any annuities or sums of money charged thereon, and of any ships and vessels, and of any reversionary interest in the public funds, and of any plate or jewels, and so in proportion for any greater or less sum of such purchase money - -	0	0	7	43 G.3. c.69. 55 G.3. c.30.
43 *G.*3. *c.*69. 10*d.* — 45 *G.*3. *c.*30. 2*d.* — For every 20*s.* of the purchase money arising, or payable, by virtue of any sale at auction in *G. B.*, of furniture, fixtures, pictures, books, horses and carriages, and all other goods and chattels whatsoever, and so in proportion of any greater or less sum of such purchase money -	0	1	0	43 G.3. c.69. 45 G.3. c.30.

The duties to be paid by the auctioneer, agent, factor, or seller by commission.

(*a*) N. B. The duties granted by stats. 43 *G.*3. *c.*69., 45 *G.*3. *c.*30., and 55 *G.*3 .*c.*142. are granted without limitation of time. Those by stat. 55 *G.*3. *c.*50. are by stat. 3 *G.*4. *c.*27. to continue until 5th *July*, 1826.

29 G. 3. c. 63. Articles excepted from auction duty. Piece goods.

By stat. 29 *G.* 3. *c.* 63. § 1, 2. No duty shall be paid for piece goods sold by auction wove or fabricated in this kingdom, which shall be sold entire in the piece or quantity as taken from the loom, and in lots of the price of 20*l.* or upwards; and so as the same be sold in no other than entered places, and openly shewn and exposed at such sale.

§ 3. And the auctioneer shall, besides the bond given on receiving his licence, give a further bond in 5,000*l.* with two sureties, that he will, within 14 days after every such sale, deliver an account thereof at the next excise office, and will not sell by auction any goods woven out of this kingdom, or woven in this kingdom, which shall not be sold in the entire piece, without payment of the proper duty.

41 G. 3. U.K. c. 91. Certain provisions.

By stat. 41 *G.* 3. *U. K. c.* 91. § 8. All corn and grain of every sort, flour and meal, and all beef, pork, hams, bacon, cheese, and butter, imported into *G. B.* shall be free of the duty on the first sale thereof by auction on account of the importer; so as the same be entered at some custom-house at the port of importation, and the sale thereof be within twelve months, and by a licensed auctioneer.

30 G. 3. c. 26. 32 G. 3. c. 41. 41 G. 3. U.K. c. 42. Goods from Yucatan, whale and other oils, wood, &c.

By 30 *G.* 3. *c.* 26. All goods imported by way of merchandize from *Yucatan*, and by 32 *G.* 3. *c.* 41. all whale oil, (and by 41 *G.* 3. *U. K. c.* 42. all elephant oil produced from sea cows or sea elephants, and commonly called "elephants' oil,") whale-bone, ambergris, and head-matter, and all skins of seals, and other animals living in the sea, and also elephants' teeth, palm-oil, dyeing-wood, drugs, and other articles for dyers' use, and all mahogany and other unmanufactured wood for the use of cabinet-makers and other manufacturers, imported in *British* ships from *Africa*, (and by 42 *G.* 3. *c.* 93. § 3.) *America* or any *British* settlement abroad, shall be free of the excise duty on the first sale thereof at auction, by or for the account of the original importer to whom the same were consigned, and by whom they were entered at the custom-house, so as such sale be made within twelve months after such goods are imported, and the same be sold by a licensed auctioneer.

42 G. 3. c. 93.

19 G. 3. c. 56. Further exceptions.

By stat. 19 *G.* 3. *c.* 56. §. 13. Nothing in this act shall extend (1) to any sale by auction of estates or chattels made by order of the court of chancery or exchequer, or courts of great sessions in *Wales;*

nor (2) to any sale made by the *East India* or *Hudson's Bay* companies;

nor (3) by order of the commissioners of customs or excise;

nor (4) by order of the board of Ordnance;

nor (5) by order of the commissioners of the navy or victualling offices;

nor (6) § 15. to any such sales made by the sheriff, for the benefit of creditors, in execution of judgment;

nor (7) to sales of goods distrained for rent;

nor (8) to sales for non-payment of tithes;

nor (9) § 15. to sales of effects of bankrupts sold by assignees;

nor (10) to goods imported by way of merchandize from any *British* colony in *America*, the same being of the growth, produce, or manufacture of such colony, on the first sale thereof, on account of the original importer to whom they were consigned, and by whom they were entered at the custom-house, so as such sale

be made within twelve months after importation; (See 59 *G*.3. *c*.54. § 3., *post.*) 19 G.3. c.56.

nor (11) to any ships or their cargoes condemned as prize, and sold for the benefit of the captor;

nor (12) to any ships or goods wrecked or stranded, sold for the benefit of the insurers or proprietors;

nor (13) to the sale of any goods damaged by fire, and sold for the benefit of the insurers;

nor (14) § 14. to any auction to be held on the account of the lord or lady of the manor foi granting any copyhold or customary messuages, lands, or tenements, for the term of a life or lives, or any number of years;

nor (15) § 14. to any auction to be held for the letting or demising any messuages, lands, or tenements, for the term of a life or lives, or any number of years, to be created by the person on whose account such auction shall be held;

nor (16) § 14. to the sale of any wood, coppice, produce of mines or quarries, or materials for working the same, or to the sale of any cattle, and live or dead stock, or unmanufactured produce of land, — so as such sale of woods, coppices, produce of mines or quarries, cattle, corn, stock, or produce of land may be made whilst they continue on the lands producing the same, and by the owner of such lands, or proprietor of or adventurer in such mines or quarries, or by their steward or agent. See also stat. 17 *G*. 3. *c*. 50. § 11, 12, 13.

52 G.3. c.53. Coffee imported from British colonies.

By stat. 52 *G*. 3. *c*. 53. § 1. All coffee imported in any *British* ship from any *British* colony in *America*, shall be sold by auction free of the auction-duty, whilst the same shall remain in warehouses, under the act 43 *G*. 3. *c*. 132., or any other act.

59 G.3. c.54. Certain imports from United States.

By stat. 59 *G*.3. *c*.54. § 3. All goods and effects imported in any ship built in the said United States of *America*, or condemned as prize there, and being owned and navigated as hereinbefore mentioned, shall and may be sold by auction, free of auction duty; but nothing herein shall authorize the sale of any such goods or effects free of the said duty unless on the first sale thereof by, or for the account of the original importer by whom the same were entered at the Custom-house at the port of importation, nor unless such sale shall be made within twelve months next after the time when such goods or effects shall have been so imported. (See *ante* 19 G.3. *c*.56. § 15. (10))

5 G.4. c.75. Goods of the Portuguese dominions imported under stat. 51 G.3. c.47. Proviso.

By stat. 5 *G*.4. *c*.75. § 2. All goods and effects imported under stat. 51 *G*.3. *c*.47. into any part of the *U.K.* in any vessel built in any of the territories or dominions in the said act mentioned, or condemned as prize there, and being owned and navigated as in the said act is mentioned, shall be sold by auction, free of auction duty: Provided that nothing in this act shall authorize the sale of any such goods, so free of the said duty, unless on the first sale thereof, by or for the account of the original importer, by whom the same were entered at the Custom-house at the port of importation, nor unless such sale shall be made within twelve months next after the importation.

19 G.3. c.56. Previous notice to be given of the sale.

By stat. 19 *G*. 3. *c*. 56. § 9. The auctioneer, if it be within the limits of the chief office of excise in *London*, shall give two days notice at the said office, elsewhere three days notice, to the collector or at the next excise office, in writing, signed by him, specifying the particular day when such sale shall begin; and shall,

19 G.3. c.56. at the same time, or within twenty-four hours after, deliver a written or printed catalogue, attested and signed by such auctioneer or his known clerk, in which catalogue shall be particularly enumerated every article, lot, parcel, and thing intended to be sold at such auction. And if he shall presume to make such sale without delivering such notice and catalogue, or sell any estate or goods not enumerated therein, he shall forfeit 20*l*.

32 G.3. c.11. Declaration to be made whether the sale took place.

By stat. 32 *G.3. c.*11. Every auctioneer who shall have delivered such notice or catalogue, shall within twenty-eight days (if within the limits of the chief office of excise, elsewhere within six weeks) after the day specified in such notice for such sale, deliver at such chief office, or to the collector of excise in whose collection such sale has been or was intended to be, a declaration in writing, setting forth whether or not any such sale had been or was opened, or begun, under such notice, or any article, lot, parcel, or thing contained in such catalogue was bid for or sold at such auction; and such auctioneer, or person acting as his clerk as aforesaid, shall make oath to the truth of such declaration before the said commissioners or collector, on pain of forfeiting 50*l*. for every neglect or refusal of delivering such declaration, verified as aforesaid.

19 G.3. c.56. Buying in by the owner, or

Provided, (19 *G.* 3. *c.* 56. § 12.) that if the real owner shall become the purchaser by his own bidding, or the bidding of any other on his behalf, without fraud or collusion, the commissioners, or authorized officers, shall make to the owner an allowance of the said duties; provided notice [in writing, signed by the owner and

28 G.3 c.37.

intended bidder, 28 *G.* 3. *c.* 37. § 20.] be given to the auctioneer before such bidding, both by the owner and person intended to be the bidder, of such person being appointed by the owner; and provided such notice be verified by the oath of the auctioneer, as also the fairness of the transaction, to the best of his knowledge and belief; in case of dispute, the proof of the fairness to lie upon the auctioneer.

42 G.3. c.93. his agent.

By stat. 42 *G.* 3. *c.* 93. § 1. The allowance aforesaid shall be made to the owner of any estate, goods, or effects, in respect whereof the auction duties shall not have been actually paid, and which have been or shall be put up to sale by way of auction, and bought in for the owner, either by his steward or known agent, actually employed in the management of such sale, or under a notice in writing, signed as well by him as by the person intended to be the bidder being appointed by the owner, and having accordingly agreed to bid for the use of the seller; provided, that no such allowance shall be so made unless notice in writing, signed by such steward or agent, of his being about to bid for such owner, shall have been given to the auctioneer before such bidding; such delivery to be verified by the auctioneer's oath, and also the fairness of the transaction to the best of his knowledge and belief.

19 G.3. c.56. 42 G.3. c.93. Notices to be produced by the auctioneer; and proof of fairness to lie on him.

And by stat. 19 *G.* 3. *c.* 56. § 12. and 42 *G.* 3. *c.* 93. § 2. No such allowance shall be made, unless at the passing of his account, such notice be produced by the auctioneer; and if any dispute shall arise concerning the fairness of the transaction, the proof thereof shall lie on the auctioneer; and on failure therein, or in case of any unfair practice, no such allowance shall be made.

19 G.3. c.56. Duty how to be paid.

By stat. 19 *G.* 3. *c.* 56. § 6. The aforesaid duties shall be a charge upon the auctioneer, immediately upon knocking down the hammer, or other closing of the bidding.

§ 7, 8. And he shall (in pursuance of his bond entered into at

the time of his licensing) within twenty-eight days, if it is within the limits of the chief office of excise in *London*, elsewhere within six weeks, deliver in an *account* in writing of the total amount of the money bid at each sale, and the several articles, lots, or parcels there sold, and the price of each : 19 G.3. c.56. Account.

And shall at the same time make *payment* of the duties, which he may retain out of the produce of the sale, or deposit made at such sale, or otherwise recover the same by action of debt, or on the case, against the person who employed him, or on whose account the goods were sold : Payment.

Every person so acting as auctioneer, or the person who acted as his clerk at such sale, if any, shall make *oath* to the truth of the account. Oath.

If such auctioneer shall neglect to deliver in his account, or to make payment, or if it shall appear that it was not a true and just account, the commissioners may put his bond in suit, unless they shall find sufficient cause to forbear the same ; and in case of a verdict or judgment against him, the licence shall be void.

§ 10. But if such auctioneer, not being within the limits of the chief office of excise in *London*, shall not be prepared to deliver in his account to the collector within whose collection the notice was delivered, and such sale by auction made, he may deliver in his said account within six weeks after every such sale at the chief office of excise in *London*, and at the same time deliver a true copy of the notice and of the catalogue delivered by him before to the collector ; and if he shall neglect to deliver such copy of the said notice, or of the said catalogue, he shall forfeit 20*l*.

By stat. 38 *G.3. c.54.* § 2. Every auctioneer, who shall neglect or refuse to make payment within the time limited by law of any duty chargeable on sales by way of auction by him held, shall forfeit double the said duty ; and in case within fourteen days next after such auctioneer shall have been convicted in such penalty, and execution or process shall have issued on such conviction to levy such penalty, he shall not have sufficient goods or chattels whereon to levy the whole of such penalty, and the same, or any part thereof, shall remain unpaid at the end of such fourteen days ; or if it shall appear that he hath acted contrary to the true intent and meaning of his bond, the said commissioners may cause such bond to be put in suit against him and sureties, unless they shall see sufficient cause to forbear the same ; and in case of a verdict against such auctioneer, his licence shall be void. 38 G.3. c.54. Penalty on auctioneers not paying duties on sales in the legal time, &c. double the duty, and forfeiture of bond.

§ 3. Whereas there is no provision at present to relieve auctioneers against any over-payment made, except in cases where sales are rendered void by reason of the person for whom sold having no title thereto, or no right to dispose thereof; for remedy thereof, if any auctioneer shall make any over-payment for or on account of the duty, he may complain within twelve months after such over-payment before the said commissioners or justices respectively within whose jurisdiction such sale was made, who, upon such complaint, may hear and determine the same, and examine witnesses upon oath on either side, and, on due proof, may relieve the party so complaining of so much of such payment as shall appear to have been overpaid. If auctioneers make over-payments of duties, they may complain to the commissioners of excise, or justices where the sale was made, who may relieve them.

By stat. 19 *G.3. c.56.* § 16. Every auctioneer who shall sell any estate, goods, or chattels that have been seized by the *sheriff* for the benefit of creditors in execution of a *judgment*, shall specify and enumerate in the catalogue, as well the particular estate and 19 G.3. c.56. Proviso with respect to fraudulent sales

19 G.3. c.56.

of goods seized by the sheriff.

effects to be sold, as the exact sum to be levied under such execution; and the sheriff or under sheriff shall subscribe and sign such catalogue, and certify at the foot thereof that all the said estates and effects were really and truly the property of the person against whom such judgment was had, and that the same were actually seized in execution of the same judgment: And every auctioneer employed by the *assignees* under a commission of *bankruptcy* to sell the effects of any bankrupt, shall likewise specify and enumerate in the catalogue the particular goods and effects then to be sold; and the assignees, or assignee if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the estates and effects were really and truly the property of the said bankrupt at the time of suing out the commission. Which respective catalogue, so signed and certified, shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *sheriff*, *under sheriff*, or *assignee* shall insert or suffer to be inserted in such catalogue, any estate or effects other than such as were really and truly the property of the debtor or bankrupt, or shall not certify in the catalogue the true sum to be levied, he shall forfeit 20*l*.

Goods damaged by fire.

§ 17. And every auctioneer employed to sell any goods damaged by *fire* for the benefit of the *insurers*, shall specify and enumerate in the catalogue the particular goods then to be sold: and the *insurers*, or the *insurer* if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the goods in such catalogue were really and truly sold for the benefit of the insurers; which catalogue so signed and certified shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *insurer* shall insert or suffer to be inserted in the catalogue any goods other than such as were really and truly to be sold for the benefit of him or them as aforesaid, or shall not certify on the catalogue the true particular of the goods to be sold, he shall forfeit 20*l*.

Sale void for defect of title.

§ 11. If any sale of any estate, goods, or chattels, shall be rendered void, by reason that the person for whose benefit they were sold had no title to the same, or no right to dispose thereof; then it shall be lawful for the auctioneer who paid the duty for the thing so sold, or for the person for whose benefit the same was sold, to lay his complaint before the commissioners of excise, or justices of peace, within whose jurisdiction such sale was made, and they are required to hear and determine the same, and examine the witnesses upon oath; and thereupon, or by other due proof, to relieve the party of so much as shall be made out to have been overpaid.

51 G.3. c.95. Commissioners or justices relieving under 19 G.3. c.56. § 11. to grant warrants to excise collectors to pay complainant the sums overpaid.

By stat. 51 *G*.3. *c*.95. § 1. The commissioners of excise or justices, before whom any such complaint shall have been so laid [under stat. 19 *G*.3. *c*.56. § 11.] and by whom the same shall have been so determined, and such relief given, shall grant their warrant, (*a*) di-

(*a*) Form of Warrant to repay the Auction Duty where a Sale becomes void for defect of Title, pursuant to stat. 19 *G*.3. *c*.56. § 11.

County of ——— to wit. } To the Collector of Excise for the ——— collection for the time being.

WHEREAS complaint hath been made before us whose names are hereunto subscribed, two of his majesty's justices of the peace, acting in and for the said

rected to the proper collector of excise, authorizing and requiring him to allow and pay to the party so complaining and relieved, out of the duties on sales at auction which shall next come to the hands of such collector, the full amount of such payment as shall be so made out before them to have been over-paid. 51 G.3. c.95.

But by stat. 28 *G.*3. *c.*37. §19. All such complaints shall be laid within twelve calendar months after such sale, if the same be rendered void as aforesaid within the time; but if otherwise, then within three calendar months after the discovery of such defect of title and not otherwise. 28 G.3. c.37.

In *Payne* v. *Cave*, 3 *T. R.* 148. it was determined, that a bidder at an auction, under the usual conditions that the highest bidder shall be the purchaser, may retract his bidding any time before the hammer is down; for the auctioneer is the agent only of the vendor, and the assent of both parties is necessary to make the contract binding. Every bidding is nothing more than an offer on one side, which is not binding until assented to by the seller, which is signified on his part by knocking down the hammer. **A bidder may retract his bidding before the hammer is down.**

If the owner of an estate put up to sale by auction, employ puffers to bid for him, it is a fraud on the real bidders, and the highest bidder cannot be compelled to complete the contract. *Howard* v. *Castle*, 6 *T. R.* 642. recognized in 8 *T. R.* 93. 95.

Finally, by stats. 19 *G.*3. *c.*56. § 18. 43 *G.*3. *c.*130. § 2. and 55 *G.*3. *c.*30. § 9. all fines, penalties, and forfeitures shall be sued for, recovered, or mitigated as by the laws of excise, or sued for in the courts at *Westminster;* and be distributed (all necessary charges first deducted,) half to the king, and half to him that shall sue. 19 G.3. c.56. 43 G.3. c.130. 55 G.3. c.30. **Levying forfeitures.**

§ IV. (3.) Bricks and Tiles.

[24 G. 3. sess. 2. c. 24.—25 G. 3. c. 66.—27 G. 3. c. 13.—28 G. 3. c. 37.—34 G. 3. c. 15.—42 G. 3. c. 93.—43 G. 3. c. 69.—45 G. 3. c. 30.—46 G. 3. c. 138.—55 G. 3. c. 176.—1 & 2 G. 4. c. 102.—5 G. 4. c. 75.]

By stat. 43 *G.* 3. *c.* 69. *sched.* (A.) and the 45 *G.* 3. *c.* 30. in lieu of any duties of excise then subsisting, new duties were imposed. **Duty.**

The said duties on bricks and tiles to be paid by the maker or makers thereof respectively.

For the duties on exportation and importation, see the *Schedules* annexed to the said act of 43 *G.*3. *c.*69.

Stat. 34 *G.* 3. *c.* 15. § 2. provides, that *tiles* made for the sole purpose of draining land, $19\frac{1}{10}$ inches long by $13\frac{3}{10}$ inches broad, and bent into a semi-elliptical form, the inside of the crown of the arch thereof being not less than seven inches perpendicular, from 34 G.3. c.15. **Tiles for draining lands.**

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county, by A. B., *auctioneer, that an estate at* ———, *in the said county, was sold on the* ——— *day of* ——— *last, by auction, for the benefit of* S. T., *and the duty of excise arising from such sale amounting to* ——*l.*, *hath been paid to you, the said collector of excise, for the collection aforesaid: And it hath been since discovered, that the said* S. T. *hath no title or right to dispose of the same estate, or any part thereof, the truth of the premises having this day been made to appear to us the said justices, by the oaths of the said* A. B. *the auctioneer, and the said* S. T.: *And this complaint having been made within one year after sale, or within three months after discovery was made that the said* S. T. *had no right to dispose of the said estate, or any part thereof. These are, therefore, to authorise and require you, the said collector of excise as aforesaid, to repay to the said* A. B., *auctioneer as aforesaid, the said sum of* ——*l.*, *so paid by him to you as aforesaid; and for your so doing, this shall be unto you a sufficient warrant. Given under our hands and seals this* ——— *day of* ——— *in the year of our Lord* ——.

34 G.3. c.15. a straight line drawn from the one to the other side thereof, after the same is so bent, and such sides not being at any part thereof more than five inches distant from each other on the inside, and as nearly of the dimensions, and bent as nearly into the form aforesaid as may be, to be used for the purposes aforesaid, shall not be subject to any of the said duties.

42 G.3. c.93. And by stat. 42 *G.* 3. *c.* 93. § 22. The exemption is extended to tiles made for such purpose not less than nine inches long, such being in every other respect of the same description and dimension as before prescribed.

46 G.3. c.138. And by stat. 46 *G.* 3. *c.* 138. § 3. It is further enacted, that semi-elliptical tiles not exceeding in inside width six inches, and the height of which from the outside of the crown of the arch in a perpendicular line to the extreme edge shall in all cases exceed the width, but with a foot from the bottom of the arch where necessary, not exceeding two inches in breadth, for the purpose of keeping up the tiles in loose soils, made for draining wet or marshy lands, shall be exempted from the excise duty.

Penalty. And by § 4. Any person using any such tile for any other purpose than above mentioned, incurs the penalty of 6*d.* for each tile so used.

55 G.3. c.176. Tiles may be made of a certain construction to serve for draining, duty free. By stat. 55 *G.* 3. *c.* 176. it is enacted, that it shall be lawful to and for any person or persons whatever to make, for the sole purpose of serving for the foundations or support of tiles bent into the semi-elliptical form precribed by stat. 34 *G.* 3. *c.* 15., or as nearly into the said form as may be, and of the dimensions and lengths allowed by the said act and stat. 42 *G.* 3. *c.* 93., to be used for the purpose of draining wet or marshy lands, flat tiles not exceeding one inch in thickness, each thereof having at one end a semicircular projection, and at the other a semicircular arch or indent, such projection and arch being portions of circles of equal diameters, and each such tile being also not less than nine inches in length and not exceeding seven inches in breadth, such flat tiles being also perforated with circular holes, each thereof being not less than two inches in diameter, and the sum of the areas of such holes in each such flat tile amounting to not less than a quarter part of the surface or superficial content of such flat tile, and no such flat tile being fit or proper for the purpose of being used in building, or in the roof or covering of any house, shed, or other building whatever, without being charged or chargeable with any duty for or in respect of such flat tiles.

1 & 2 G.4. c.102. Flat tiles for the foundation of semi-elliptical tiles used for draining lands exempted from duty. By stat. 1 & 2 *G.* 4. *c.* 102. § 2. after reciting stat. 55 *G.* 3. *c.* 176. it is enacted, that it shall be lawful for any person to make flat tiles for the sole purpose of serving for the foundations or support of such semi-elliptical tiles as shall be made and applicable and fit for the sole purpose of draining wet or marshy lands, and no such flat tile being fit or proper for the purpose of being used in building, or in the roof or covering of any house, shed, or other bui'ding whatever, or otherwise than as aforesaid, without being charged or chargeable with any duty for such flat tiles.

5 G.4. c.75. Tiles or bricks may be made for draining land duty-free. Stat. 5 *G.* 4. *c.* 75. § 9. For the giving further encouragement to the draining wet and marshy lands, enacts, that from the 17th *June*, 1824, it shall be lawful for any person or persons to make tiles or bricks for the sole purpose of draining wet or marshy land, without being charged or chargeable with any duty

for or in respect thereof: Provided always, that all such tiles and bricks shall be made upon the land for the draining of which they shall be used, or within a quarter of a mile of such land; and that if any such tiles or bricks shall be used in the erecting, or in the roofing or covering of any house, shed, or other building, or otherwise than for such purpose of draining as aforesaid, the same shall be charged and chargeable with the duty, in like manner as other tiles or bricks are chargeable under any act or acts in force immediately before the passing of this act. 5 G. 4. c. 75. — provided they are made on such land or within a quarter of a mile of it.

By stat. 24 *G.* 3. *sess.* 2. *c.* 24. § 4. Every maker of bricks or tiles, before he begins to make, shall give or leave notice in writing at the next excise office of his name and place of abode, and of the sheds, workhouses, or other places where he intends to make such bricks or tiles, on pain of 100*l*. 24 G. 3. c. 24. Notice to be given.

§ 5. 11. 14. All bricks or tiles chargeable with the said duties shall be taken account of, and charged by the officer whilst they are drying, after being turned out of the moulds, and before removed to the kiln or clamp for burning, for which purpose any officer may enter into the fields, sheds, or other places where making, and take an account thereof in writing, and leave a copy (if demanded) with such maker, on pain of 40*s.*; and if any person shall obstruct such officer, he shall forfeit 50*l*. When the duty shall be charged. Obstructing the officer.

§ 6. The officer in charging the duty shall allow ten for every 100 when charged in the field before burnt, in compensation for all waste, loss, or damages. Allowance for waste.

And by stat 25 *G.* 3. *c.* 66. § 2. if the maker shall remove any bricks or tiles to the kiln, clamp, or other place for burning, from or out of the field or place where they shall be put to dry, before the officer shall have taken an account thereof, he shall forfeit 50*l*. And all so carried away, and found in the possession of any maker or trader therein, or person for his use, shall be forfeited, and may be seized, or the value thereof, and shall be recovered, one moiety to the king, the other to the informer. 25 G. 3. Not to be removed until the officer has charged the duties.

Stat. 24 *G.* 3. *sess.* 2. *c.* 24. § 8. provides that no such maker shall be subject to the said penalty, if the officer shall fail to take an account on due notice given him three days before such removal. 24 G. 3. c. 24.

By stat. 25 *G.* 3. *c.* 66. § 3. the maker shall keep the bricks and tiles unsurveyed separate from those that have been surveyed; on pain of forfeiting 50*l*. 25 G. 3. c. 66. Bricks, &c. not surveyed to be kept separate.

§ 4. And such maker shall, while the same are drying, place them in such manner as the officer may easily and securely take an account thereof; and if he shall place them in any irregular or unusual manner, with intent to make it difficult or unsafe for the officer to take such account, he shall forfeit 50*l*. To be properly placed whilst drying.

By stat. 24 *G.* 3. *sess.* 2. *c.* 24. § 10. if any maker shall fraudulently conceal or hide any bricks or tiles in any part of the operation of making, with intent to defraud the duties, he shall forfeit the same, and also 20*l*. 24 G. 3. c. 24. Concealing to evade the duty.

§ 12. 13. Every such maker shall once in every six weeks make entry in writing upon his oath, or on the oath of his chief workman, at the next excise office, of all bricks and tiles by him made within that time, distinguishing the kinds, and specifying the names and abodes of the owner, if such maker be not the owner, on pain of 50*l*., and shall within six weeks after such entry, clear off all the Makers to give an account every six weeks, and to clear off the duty.

24 G.3. sess. 2. c.24. duties then due thereon, on pain of double duty. And if any person shall carry away such bricks or tiles before the duty be cleared off, he shall forfeit double the value thereof. But such maker shall not, for making such entry, be obliged to go further than the next market town.

Utensils liable. § 15. And all tools, implements, and utensils used in making such bricks or tiles, in custody of such maker, shall be liable to be seized for any debts or penalties (arising or incurred under this act), whether the debtor or offender be the lawful owner thereof or not. See stat. 28 *G.* 3. *c.* 37. § 21.

Bricks, &c. may be exported, duty free. § 16, 17, 18. Bricks or tiles for which the duties have been paid may be exported, and on security given before the shipping thereof that the same shall not be relanded, the person exporting the same shall be allowed a drawback of such duties; and in case such bricks or tiles shall be relanded, the same shall be forfeited to the use of H.M. over and above the penalty of such bond. See 27 *G.* 3. *c.* 13. *sched.* (F.)

Penalties how to be recovered. By § 21. all penalties and forfeitures are to be sued for, levied, and mitigated as by the laws of excise (*a*), or in the courts at *Westminster*, and to be distributed half to the king, and half to him that shall sue.

§ IV. (4.) Candles.

[8 An. c. 9. — 10 An. c. 26. — 11 G. 1. c. 30. — 12 G. 1. c. 28. — 23 G. 2. c. 21. — c. 24. — 24 G. 2. c. 40. — 26 G. 2. c. 32. — 5 G. 3. c. 43. — 10 G. 3. c. 44. — 24 G. 3. sess. 2. c. 11. — c. 30. — c. 36. — c. 41. — 25 G. 3. c. 74. — 26 G. 3. c. 77. — 27 G. 3. c. 31. — 28 G. 3. c. 37. — 42 G. 3. c. 93. — 43 G. 3. c. 69. — 49 G. 3. c. 98. — 53 G. 3. c. 103. — 55 G. 3. c. 30. — 59 G. 3. c. 32. — c. 90. — 3 G. 4. c. 27.]

43 G 3. c.69. Tallow chandlers to be licensed, and to be renewed annually. By stat. 43 *G.* 3. *c.* 69. every chandler or maker of candles for sale, other than wax candles, shall take out a license from the officers of excise, for which he shall pay 1*l.*, and by 55 *G.* 3. *c.* 30. (*b*) 1*l.* additional, and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting 10*l.* See 24 G. 3. *sess.* 2. *c.* 41. § 7.

Makers or sellers of wax or spermaceti candles to be licensed. And every person *making* wax or spermaceti candles shall take out a license, for which he shall pay 6*l.*, and for *dealing* in or *selling* such candles 10*s.* 6*d.*, and by 55 *G.* 3. *c.* 30. (*b*) 10*s.* 6*d.* additional, and shall renew the same as aforesaid, on pain of forfeiting 20*l.* 24 *G.* 3. *sess.* 2. *c.* 36. § 12.

Persons in partnership. But persons in partnership need only take out one license for one house. 24 *G.* 3. *sess.* 2. *c.* 36. § 13.—*c.* 41. § 8.

Need not be licensed as makers, &c. Provided always, that no person who hath paid such license duty for *making* shall be obliged to take out a license for *selling* also during the same year. 24 *G.* 3. *sess.* 2. *c.* 41. § 14.

53 G.3. c.103. Transfer of licence. By stat. 53 *G.* 3. *c.* 103. upon the death or removal of any person licensed to manufacture or sell any exciseable commodity, the commissioners, collectors, and supervisors of excise are empowered to authorise the executors, administrators, wife, or child of the deceased person, and the assignee or assigns of the person removing

(*a*) For which see *ante*, 46 *G.* 3. *c.* 112. and 56 *G.* 3. *c.* 104. § 15. Sect. II. *g.*

(*b*) The duties by stat. 43 *G.* 3. *c.* 69. are granted without limitation of time, those by stat. 55 *G.* 3. *c.* 30. are by stat. 3 *G.* 4. *c.* 27. continued until 5th *July* 1826.

to carry on the trade in the same premises during the residue of the term for which such licence was originally granted. 53 G.3. c.108.

And by stat. 25 *G*.3. *c*.74. § 25. No person residing within the limits of the head office shall be permitted to make candles, unless he occupy a tenement of 10*l*. a year, and for which he shall be assessed in his own name, and shall also pay to the parish rates; elsewhere, unless such person shall be assessed and pay to church and poor where he resides. And no entry made shall avail any person for any longer time than he shall be qualified as aforesaid. 25 G.3. c.74. Makers of candles to be rated.

By stat. 43 *G*.3. *c*.69. *sched*. (A.) In lieu of any subsisting duties of excise, other duties are imposed: [and by stat. 49 *G*.3. *c*.98. duties of customs are likewise imposed.] 43 G.3. c.69. Duties.

And for the duties on exportation, see the schedule annexed to the said act.

And by stat. 24 *G*.3. *sess*.2. *c*.11. § 10. All powers given to the excise officers or other persons by former acts, to compound with any person for the duties on candles, shall cease. 24 G.3. c.11. Compounding abolished.

But the said duties shall not be charged on such small rush lights as shall be made by any persons to be used in their own houses only; so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in or once drawn through grease or kitchen stuff, and not at all through any tallow melted or refined. 8 *Ann*. *c*.9. § 31.—24 *G*.3. *sess*.2. *c*.11. § 5. 8 An. c.9. 24 G.3. c.11. Rush lights excepted.

During the continuance of the duties upon candles, no person shall use in the inside of his house any lamp, wherein any oil or fat (other than oil made of fish within *G.B.*) shall be burned for giving light; on pain of 40*s*. 8 *Ann*. *c*.9. § 18. 8 An. c.9. Oil not to be used instead of candles.

§ 6. No maker of candles shall erect, set up, alter, change, or use any melting house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of excise; on pain of 50*l*. Places for making candles to be entered.

§ 17. And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof.

By stat. 11 *G*.1. *c*.30. § 23. If any maker of candles shall use any melting-house, shop, or other place for making or keeping candles, or for melting or keeping wax, tallow, or other materials, or use any copper, furnace, or other vessel for melting the same, or any moulds or other utensils for making of candles, without having made entry thereof in writing at the next excise office, he shall forfeit 100*l*. for every such melting house or other place, and for every such copper, &c. 11 G.1. c.30.

By stat. 59 *G*.3. *c*.90. § 7. Every melter of tallow, fat, grease, or kitchen stuff, not being an entered maker of candles, shall give notice in writing at the office of excise of every house, workhouse, room, and place made use of for the melting, rendering, or keeping of any tallow, fat, grease, or kitchen stuff, within the limits whereof such house, &c. shall be situate, before he shall so make use of any such house, &c.; and it shall be lawful for any officer 59 G.3. c.90. Melters of tallow, not being entered candle-makers, to give notice to officer of places to be used for melting.

59 G.3. c.90.

Officer to enter and take an account.

of excise to enter every house, workhouse, room, and place, entered or made use of by any melter of tallow, fat, or grease, for the melting, rendering, or keeping of tallow, fat, grease, and kitchen stuff, and to survey and take an account of all tallow, fat, grease, and kitchen stuff, and other materials, in the possession of any melter, and to take any sample thereof, not exceeding one pound for each such sample, paying for the same at the current value thereof; and if any melter shall use any house or place for the melting, &c. of any tallow, fat, grease, or kitchen stuff, without having first made entry of such house, workhouse, room, and place, at the office of excise within the limits where the same shall be situated; or if any such person, not being an entered soapmaker, shall have in his possession any barilla, kelp, black ashes, or any leys, ley or lye; or if any such person shall at any time obstruct or hinder any officer of excise from entering any house, workhouse, room, or place, entered or made use of by any melter of tallow, fat, grease, or kitchen stuff, for the melting, rendering, or keeping of any tallow, &c., or from inspecting, surveying, or taking an account or sample of any tallow, fat, grease, or kitchen stuff, or other materials, barilla, kelp, black ashes, lees, ley or lye, in the possession of any melter, such melter so offending, shall for every offence forfeit the sum of 200*l.*; and all barilla, kelp, black ashes, lees, ley or lye, found in the possession of any such person, not being an entered soap maker, shall be forfeited, and may be seized by any officer of excise.

Barilla, &c. not allowed unless in a soap-maker's premises.

Officer not to be obstructed.

Penalty 200*l.*

8 Ann. c.9. Officer to enter and take account.

By stat 8 *Ann. c.*9. § 10. The officer shall at all times, and if in the night then in the presence of a constable, be permitted on his request to enter the house, melting house, warehouse, or other place belonging to or used by any maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report, under his hand, with or for the maker; and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 *G.*1. *c.*28. §30.), he shall forfeit 40*s.*

11 G. 1. c.30.

By stat. 11 *G.*1. *c.*30. § 24. The officer, between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening and five in the morning with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up shall on his request be opened: on pain that every person obstructing or molesting him shall forfeit 100*l.*

24 G.3. c.11.

By stat. 24 *G.*3. *sess.*2. *c.*11. § 7. But the officer shall at all times, by day or by night, be permitted, upon his request, to enter into the house, warehouse, melting house, or other place whatsoever belonging to or used by any maker of candles, in like manner as such officers might before have done in the daytime.

27 G.3. c.31. Exception.

But by stat. 27 *G.*3. *c.*31. § 20. No officer shall enter such workhouse or place between the hours of *eleven* at night and *five* in the morning without the presence of a constable or peace officer, unless such maker shall have any course or making of candles unfinished or in operation; or shall have any legal notice depending of his intention to make between those hours; or shall have made any preparation for making any course or making of candles.

§ 18. No entry shall be deemed to be withdrawn whilst any duty shall be depending and unpaid, or any copper, furnace, or other utensil shall be standing in any such melting house, workhouse, warehouse, storehouse, shop, room, or other place. 27 G.3. c.31. No entry deemed withdrawn whilst any duty unpaid.

By stat. 11 *G*.1. *c*.30. § 25. If the officer, on searching any unentered house or place, shall find candles either made or making, or tallow or other materials, melting or melted, or cottons or rushes spread, or any copper, mould, or other utensil warm with tallow or other materials; this shall be sufficient evidence to convict the offender in the penalty of 100*l*. for having used the same not being entered. 11 G.1. c.30. Finding candles, &c. in unentered places.

§ 26. And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if personally delivered to him, and by his proper name. Vide ante. Summoning offenders.

By stat. 10 *Ann*. *c*.26. § 106. 107. 11 *G*.1. *c*.30. § 27. 24 *G*.3. *sess*.2. *c*.11. § 9. Every maker of candles for sale shall, before he begins to work upon, make, or dip any course or making of candles, not being mould candles, [but by 24 *G*.3. *sess*.2. *c*.11. § 9. the exception of *mould candles* is taken away,] or make preparation for the same, give notice in writing to the officer of such his intention, and declare the time of the day or night when he intends to begin, and the number of sticks of which such making is intended to consist, and the size and number of candles on each stick, and the number and size of the moulds he intends to fill and draw, and how often they are intended to be filled and drawn in each making; and in default thereof, or if he have at such making more sticks or more candles, or of a larger size, or more or larger moulds, or shall draw the said moulds a greater number of times than mentioned in such notice or declaration, he shall forfeit 50*l*., (or after the weighing by the officer increase the weight of such candles, by redipping or otherwise, he shall forfeit 10*l*.) And if after such notice he shall not begin at the time mentioned therein, or within three hours of it, such notice shall be void. 10 An. c.26. 11 G.1. c.30. 24 G.3. c.11. Notice to be given of the time of making.

By stat. 25 *G*.3. *c*.74. § 29. Every such maker shall give to such officer notice in writing of the hour when he intends to begin to spread cottons, wicks, or rushes, for any course of making of candles, and the hour and time when he intends to begin to run in or dip such wicks, which notice shall be given (if within the limits of the *head office*, six hours; if in any *city* or market town, twelve hours; elsewhere, twenty-four hours) before he shall begin, on pain of forfeiting 50*l*. for every time he shall so begin. 25 G.3. c.74. Times limited for giving such notice.

§ 30. And if such maker shall not begin and proceed at the time mentioned in such notice, or within three hours next after, such notice shall be void.

By stat. 26 *G*.3. *c*.77. § 6. Every maker of candles having begun to spread cottons, wicks or rushes, for any course or making of candles (other than mould candles) shall proceed and continue, without delay or interruption, until the whole intended to be used in such course or making is finished; and the time for beginning to run in or dip such cottons, wicks, or rushes respectively shall not be more than five hours after the beginning to spread the same as aforesaid; and shall continue to run in or dip such cottons, &c. respectively without interruption until the whole is finished, on pain of 50*l*. for every such offence. 26 G.3. c.77. To continue working without interruption.

26 G. 3. c. 77.

To begin to dip within 5 hours of spreading the cotton.

§ 7. If in any such notice the hour or time specified for beginning to run in or dip such cottons, &c. shall be more than five hours after the time specified in the notice for beginning to spread such cottons, &c., such notice shall be void, and such chandler giving the same shall be liable to all such fines, penalties, and forfeitures as he would have been if no notice had been given.

11 G. 1. c. 30. What shall be deemed beginning to work.

And by stat. 11 *G.* 1. *c.* 30. § 28. lighting a fire under a vessel, for melting the materials, or finding in such vessel, or in any mould or other utensil, the materials melted or melting, or cottons or rushes spread or spreading, shall be deemed to be such a *beginning to work* as shall make him liable to the said forfeiture of 50*l.*

27 G. 3. c. 31. Furnace doors, &c. to be locked or secured.

By stat. 27 *G.* 3. *c.* 31. § 21. every candlemaker shall, at his own expence, find and affix sufficient fastenings to be approved of in writing by the surveyor or supervisor, to every furnace, copper, pan, or other utensil used for melting materials to be made into candles; and also covers with proper fastenings, to be approved as aforesaid, to every dipping mould which such maker shall have in his custody; and every such utensil shall be securely locked, fastened, or sealed by the officer, as soon as any melting shall be finished; and every such dipping mould, with the cover, shall be locked, fastened, or sealed in like manner, as soon as the dipping shall be finished. And such maker shall provide a secure room, place, or chest with fastenings, to be approved as aforesaid, for locking up all moulds for making mould candles, which shall be there locked up and secured by such officer when the same shall cease to be used. And when such maker shall be desirous to light a fire, and to have the furnace door, copper, pan, or utensil or dipping mould opened, or to use such moulds, he shall give to such officer six hours' notice in writing if within the limits of the *chief office;* twelve hours if he shall reside *in any market town;* and twenty-four hours if he reside *out of a market town;* and such officer shall attend at the time mentioned in such notice, and open such doors and places, as the case may require; and if such maker shall not light a fire, or shall not proceed to use such utensils, within one hour after the doors are opened, such notice shall be void, and such officer shall proceed to lock up and secure the same again in manner as aforesaid, and such maker shall be obliged to give a fresh notice. And if such maker shall neglect or refuse to do and perform any of the matters aforesaid, or to pay for any locks, keys, or other necessary fastenings which shall have been provided by such officer, or if any person shall hinder any officer in fixing such locks or fastenings, or in locking, sealing, or securing the same in such manner as he shall think most effectual to answer the purposes of this act, or shall open any such furnace, copper, pan, utensil, dipping mould, or door, before the same shall have been opened by the officer, or shall wilfully break or damage any lock, seal, or fastening; he shall for every such offence forfeit 100*l.*

Having moulds not locked up.

§ 22. If there shall be on the premises in the custody of any candlemaker any mould proper to be made use of for making mould candles, not locked up and secured as aforesaid, unless after notice given as aforesaid; every such maker shall forfeit 100*l.*

8 Ann. c. 9. The officer shall

By stat. 8 *Ann.* *c.* 9. § 12, 13. The officer shall be permitted to take an account of the quantities of wax, tallow, and other ma-

terials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive satisfaction what is become thereof, the officer may charge such quantity of candles as the materials so missing in his judgment would have made, not exceeding 108lb. of candles for every 112lb. of materials missing, and so proportionably. And if any such maker shall obstruct the officer, he shall forfeit 20*l.* 8 An. c.9. charge for materials missing.

§ 29. Candles cracked or spoiled in making may be defaced by the officer, who shall make allowance for the duty. Candles spoiled in making.

§ 14. No maker of candles (on pain of 20*l.*) shall remove any candles before the officer hath taken account of the same, without giving to the officer, within the bills, twenty four hours' notice, and elsewhere, two days' notice, of his intention to remove the same. Removing candles before charged with the duty.

§ 15. The maker shall keep his candles which have not been surveyed separate from all other candles which have been surveyed for twenty-four hours after making within the bills, and for two days elsewhere; unless they shall have been sooner surveyed by the officer; on pain of 5*l.* Candles uncharged to be kept separate from those charged with duty.

By stat. 5 *G.*3. *c.*43. § 20. If the officer shall have cause to suspect that candles are privately making in any place; or that any candles are concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner [two commissioners, 23 *G.*2. *c.*21. § 34.] or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorise such officer, by day or night (but if in the night, in presence of a constable,) to enter into every such place so suspected, and to seize and carry away as forfeited all such candles as he shall there find so privately making, together with all materials then ready or preparing for making the same, and also all such candles as he shall find so concealed, together with the boxes or other package containing the same: And the person that shall be found privately making such candles, or in whose possession any such shall be found, shall forfeit 100*l.* unless he shall prove payment of the duty. 5 G.3. c.43. Search for candles concealed.

By stat. 23 *G.*2. *c.*21. § 34. If any person shall obstruct any such officer in searching any such suspected places, or in seizing such candles, he shall forfeit 100*l.* 23 G.2. c.21.

By stat. 11 *G.*1. *c.*30. § 30. If any maker of candles for sale shall mingle candles which have not been weighed by the officer with those which have; or shall fraudulently remove any before weighing; or conceal any candles or materials; he shall forfeit 100*l.* 11 G.1. c.30. Further penalty of removing, mingling, or concealing.

By stat. 25 *G.*3. *c.*74. § 31. If any officer shall discover that any making of candles is carried on in any private workhouse, room, or place, whereof no notice has been given as aforesaid; and shall at the same time discover therein any person knowingly assisting or any ways concerned in carrying on the same, he shall forfeit 20*l.* over and above all penalties which such maker shall be liable to: And such officer may detain such person, and carry him before a justice, who on confession or oath of one witness may convict such offender, who, immediately on conviction, shall pay 20*l.* into the hands of such officer, and on his refusing or neglecting, such justice shall by warrant under hand and seal commit him to the house of 25 G.3. c.74. Persons assisting in privately making candles.

25 G.3. c.74. correction to hard labour for *two* months, unless the penalty be sooner paid: And if such person shall be convicted of a second offence, he shall in like manner pay 40*l.* or be committed for *four months.*

Entry of candles made.

§ 27. Every person who shall make any candles shall once in every week make a true entry in writing, at the next excise office, of all candles by him made within such week; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the said week; on pain for every neglect of entry to forfeit 20*l.* Which entry shall be upon the oath of the maker or his chief workman or servant employed in the making, according to the best of their knowledge and belief; and said entries and oaths, within the bills, to be made with and administered by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors.

8 Ann. c.9.

But by stat. 8 *Ann. c.*9. § 8. He shall not be obliged to go further than the next market town for making such entry.

25 G.3. c 74. Duty to be cleared off.

By stat. 25 *G.*3. *c.*74. § 28. The maker shall, in one week after such entry, clear off the duties, on pain of double duty; and no maker after such default in payment shall sell, deliver, or carry out any candles till he hath cleared off the duty, on pain of double value.

11 G.1. c.30. Candles not entered, nor duty paid.

And by stat. 11 *G.*1. *c.*30. § 29. if there shall be found in the possession of any maker of candles for sale any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been charged and paid, he shall be chargeable with the duties; and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours' notice in writing to the surveying officer, or at the next excise office, of his intention to buy the same, and of whom.

26 G.3. c.77. Persons having candles in their possession not charged with the duty.

And by stat. 26 *G.*3. *c.*77. § 10. 11. if any person shall knowingly receive, buy, or have in his possession any candles after the same shall be removed from the place where they were made, and ought to have been charged with the duty, before the said duty hath been charged (except such as have been condemned as forfeited,) whether he claim any property or interest therein or not, he shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sorts shall then bear in *London.*

8 Ann. c.9. Candles, where to be sold.

By stat. 8 *Ann. c.*9. § 18. no person shall expose to sale any candles, unless in his public shop or warehouse, public fair or market, on pain of 5*l.*

23 G.2. c.21. Candles carried coastwise.

By stat. 23 *G.*2. *c.*21. § 29. (*a*) cocquets granted for shipping candles to be landed in any other part of the kingdom shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be forfeited and seized, together with the package.

Exportation and importation.

§ 27. No candles shall be imported, otherwise than in some package containing at least 224lbs. neat of candles, and stowed

(*a*) The provisions of 23 *G.*2. *c.*21. respecting Candles, are the same as respecting Soap and Starch.

openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50*l.* See 42 *G.*3. *c.*93. § 19. 23 G.2. c.21.

But by stat. 26 *G.*2. *c.*32. § 8. on information brought against such master, he may detain the wages of the mariners till it be determined; and if it shall appear that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages in payment of the forfeiture. 26 G.2. c.32.

By stat. 42 *G.*3. *c.*9. § 19. no candles imported otherwise than according to 23 *G.*2. *c.*21. § 27. shall be entered for exportation, on pain of forfeiture of the same. 42 G.3. c.9.

Candles for which the duty hath been paid may be exported and the duty drawn back. 8 *Ann.* *c.*9. § 24, 25, 26.—43 *G.*3. *c.*69. *Sched.* (C).

By stat. 23 *G.*2. *c.*21. § 28. the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped. 23 G.2. c.21. Seizures.

And by stat. 24 *G.*3. *sess.*2. *c.*36. § 7. all wax candles seized on importation or otherwise, and condemned for non-payment of the duties, shall be broken or otherwise rendered unfit for use. 24 G.3. c.36.

By stat. 23 *G.*2. *c.*21. § 30. the officers of customs or excise may seize any candles, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same were made in some private workhouse, or clandestinely imported without payment of duty; or that the same have been exported and re-landed after repayment of the duty; and if the party in whose possession the same shall be found shall not at the hearing of the information make it appear that the duty hath been paid or secured, he shall forfeit 5*l.* for every 100lb. weight, and also the candles and package shall be forfeited. 23 G.2. c.21.

§ 31. If any foreign candles shall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture; the same, together with the package, vessels, boats, horses, and other carriages used in landing or conveying the same, shall be forfeited, and may be seized by any officer of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5*l.* for every hundred weight.

§ 32. If any person shall knowingly harbour or conceal any candles unlawfully imported, or relanded after shipping for exportation upon debenture, or suffer the same, he shall, whether he claim any property therein or not, forfeit 50*l.* for every 100lbs. weight, together with the candles and package.

§ 33. And where any such candles shall be seized as forfeited, and *no person shall claim the same* in twenty days, if it be within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice, signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the day and time of day for proceeding to trial and condemnation of the same, by the commissioners of excise; and if it be out of the said limits, then public notice shall be given by proclamation at the next market town on the market day next after the said twenty days, of the day and place when and where the justices will proceed to trial and condemnation

23 G.2. c 21. thereof: And the judgment thereon shall not be liable to any appeal, or to be removed by *certiorari*.

Penalties how recovered. § 37. But where *any person shall claim the same*, then all informations for the condemnation of such seizures, or recovering such penalties, (if within the limits of the chief office in *London*), shall be heard by the commissioners of excise or appeals, elsewhere by two neighbouring justices where the seizure was made or penalty incurred; who, on complaint within three months, may summon the party accused, and the witnesses on either side, and on appearance of the offender, (or on proof of notice given to him), may proceed to examine the facts and witnesses upon oath, and to give judgment as well for the penalty as for the condemnation of such candles, and the packages, boats, cattle, and carriages so seized, and to issue their warrant for the sale thereof, and for levying any pecuniary penalty upon the goods of such offender, which may be sold if not redeemed within fourteen days; and for want of sufficient distress, such offender may be imprisoned till satisfaction be made.

Appeal. § 37. 40. If either party be not satisfied with the judgment of such justices, he may appeal to the next sessions, whose judgement therein shall be final; and shall not be removable by *certiorari*.

Distribution of penalties. § 34. And all such penalties and forfeitures shall be applied, half to the king and half to the seizor or prosecutor.

Mitigation. § 38. Provided, that any such penalties and forfeitures may be mitigated, so as not to reduce the same to less than one-fourth over and above the costs.

Proof lies on the owner. § 35. Where candles shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer.

24 G.3. c. 11. Obstructing officers. By stat. 24 *G.3. sess.* 2. *c.*11. § 8. if any maker of candles shall obstruct any officer in the execution of the powers given to him by this or any other act, for securing the duties on candles, he shall for every such offence forfeit 100*l.*

8 Ann. c.9. Scales and weights. By stat. 8 *Ann. c.*9. § 11. every maker shall keep just scales and weights where he makes his candles, and shall permit and assist the officer to make use thereof, on pain of 10*l.*

10 G.3. c.44. By stat. 10 *G.3. c.*44. if he shall make use of insufficient scales or weights, he shall forfeit 100*l.* But not to be prosecuted both on this and the former act. [And by stat. 28 *G.3. c.*37. § 15. the same shall be forfeited, and may be seized by any officer of excise.]

26 G.3. c.77. Cheating or obstructing the officer in weighing. By stat. 26 *G.3. c.*77. § 8. if he shall, in weighing his stock, put any other substance therein, whereby such officer may be hindered from taking a just account of such stock, or shall forcibly obstruct or by any contrivance prevent or impede such officer, he shall forfeit 100*l.*

Power of the justices. By stat. 8 *Ann. c.*9. § 28. — 11 *G.*1. *c.*30. § 29. — 24 *G.*2. *c.*40. § 39. 25 *G.*3. *c.*74. § 32, 33. all the fines, forfeitures, and penalties, may be recovered and mitigated as by the laws of excise (*a*), or in the courts at *Westminster;* and distributed, half to the king and half to him that shall inform or sue.

(*a*) For which see *ante* 46 *G.*3. *c.*112. and 56 *G.*3. *c.*104. § 15. Sect. II. *g.* p.67, 68.

By stat. 8 *Ann.* *c.*9. § 19. and 28 *G.*3. *c.*37. § 21. all candles, materials, and utensils for making candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures, in the same manner as if the debtor or offender were the lawful owner. 8 Ann. c.9. 28 G.3. c.37. Utensils liable to the duties and penalties.

§ IV. (5.) Coffee, Tea, Chocolate, and Cocoa-nuts.

[10 G.1. c.10.—11 G.1. c.30.—12 G.1. c.28.—4 G.2. c.14.—9 G.2. c.35.—18 G.2. c.26.—24 G.2. c.40.—32 G.2. c.10.—5 G.3. c.43.—10 G.3. c.44.—12 G.3. c.46.—13 G.3. c.44.—17 G.3. c.29.—19 G.3. c.69.—20 G.3. c.35.—21 G.3. c.55.—22 G.3. c.68.—23 G.3. c.79.—24 G.3. c.70.—25 G.3. sess. 2. c.47.—26 G.3. c.77.—27 G.3. c.13.—28 G.3. c.37.—35 G.3. c.118.—41 G.3. *U.K.* c.91.—42 G.3. c.93.—43 G.3. c.68.—c.69.—c.129.—48 G.3. c.120.—49 G.3. c.80.—51 G.3. c.58.—c.95.—52 G.3. c.149.—53 G.3. c.88.—c.103.—55 G.3. c.30.—57 G.3. c.8.—58 G.3. c.76.—59 G.3. c.32.—c.52.—c.53.—1 G.4. c.59.—3 G.4. c.53.—c.57.—4 G.4. c.24.—5 G.4. c.75.]

By stat. 59 *G.*3. *c.*52. all former duties of customs are repealed and new duties imposed. Customs.

As to securing coffee in warehouses, and exporting cocoa nuts; see stat. 4. G.4. c.24. Warehousing.

By stat. 59 *G.*3. *c.*53. new duties are imposed upon tea, coffee, and cocoa nuts, and all former duties shall cease and determine, except arrears, &c. 59 G.3. c.53. New excise duties.

All duties of customs on cocoa nuts to cease from 5th July, 1824, 5 *G.*4. *c.*75. § 1. and new duties are imposed, to be levied under the former laws of excise and customs. *Id.* 5 G.4. c.75.

§ 16. After reciting that all the duties payable upon tea, coffee, and cocoa nuts are by this act made wholly *excise* duties, (but see stat. 5 *G.*4. *c.*75. § 1.) enacts that all powers, regulations, &c. contained in any act relating to tea, coffee, and cocoa nuts, &c. or to the importation, warehousing removing, &c. thereof, and heretofore exercised by the commissioners and officers of customs, shall in future be executed by the commissioners and officers of excise; and all fines, penalties, &c. imposed by former acts are extended to this.

The duties upon tea to be paid by the purchaser to the company, and by the company to the commissioners of excise.

By stat. 10 *G.*1 *c.*10. § 2. no chocolate ready made, or cocoa paste shall be imported, on pain of forfeiting the same, and double value, and also the bags, casks, and other package. 10 G.1. c.10. Chocolate or cocoa paste, not to be imported.

And by stat. 4 *G.*2. *c.*14. § 12. if any person shall import any cocoa nut shells or husks without the nuts, the officers of the customs, excise, or inland duties may seize them, with the bags, boxes, and other package; and after condemnation they shall be destroyed, or otherwise disposed of, as any three respective commissioners shall appoint; and they may reward such officer in any sum not exceeding 20*s.* per cwt. 4 G.2. c.14. Cocoa nut shells without the nuts.

By stat. 51 *G.*3. *c.*58. § 1. all duties upon *Irish* cocoa, cocoa paste, or chocolate imported into *G. B.*, and all drawbacks payable on chocolate of the manufacture of *G. B.* exported to *Ireland*, shall cease. 51 G.3. c.58.

By stat. 4 *G.*4. *c.*24. § 16. no coffee nor cocoa nuts shall be so warehoused, unless imported in casks, bags, boxes, or other pack- 4 G.4. c.24. In what quan-

4 G.4. c.24. — tities coffee may be imported and warehoused.

ages, containing at least 100lbs. Avoirdupois net weight each, and if imported in casks, &c. or other packages of less content respectively than as aforesaid, shall be forfeited, and may be seized by any officer of customs or excise; and see 5 *G*.3. *c*.43. § 34. 23 *G*.3. *c*.79. § 4. 42 *G*.3. *c*.93. § 19. 48 *G*.3. *c*.120. § 5.

11 G.1. c.30. Excise officers may go on board and search.

By stat. 11 *G*.1. *c*.30. § 1. the excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipping, or unshipped, to be laid on land, without entry and payment of duties, with the boxes, bags, or other package.

9 G.2. c.35. Ships hovering near the coast, with tea on board.

By stat. 9 *G*.2. *c*.35. § 22. where any vessel coming from foreign parts, and having six pounds or more of tea on board, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore, or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the person in charge of such vessel shall give notice, and make proof before the chief officer of customs, immediately after arrival in the said port, with coffee on board; all such tea, with the chests and other packages, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers.

5 G.3. c.43.

And by stat. 5 *G*.3. *c*.43. § 38. where any vessel coming from foreign parts, and having on board 20lbs. of coffee, shall be found at anchor, or hovering within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting (notice, as in the 9 *G*.2. *c*.35. § 22. ante); all such coffee, together with the package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle and furniture shall be forfeited, provided such vessel doth not exceed the burden of 50 tons: to be disposed of according to 5 *G*.3. *c*.43.

4 G.4. c.24. Warehousing.

Stat. 4 *G*.4. *c*.24. § 2—5. Provides regulations for the warehousing of coffee and cocoa-nuts, and see 35 *G*.3. c.118. § 8, 9.

35 G.3. c.118. Casks, &c. of coffee and cocoa nuts to be marked and warehoused.

By stat. 35 *G*.3. *c*.118. § 10. The officers of excise shall mark every cask, bag, or other package of coffee or cocoa-nuts, on board ships importing them, with a progressive number, and a distinguishing landing mark; and if unshipped before so marked, they shall be forfeited and seized. And when so marked, the importers, proprietors, or consignees shall, in the presence of the officer, unship and convey the same to some warehouse so provided, and such officer shall attend.

4 G.4. c.24. Damaged to be separated from sound coffee.

By stat. 4 *G*.4. *c*.24. § 75. Importers of coffee may separate damaged from undamaged coffee, under superintendance of an excise officer, and sort the different qualities, the word "*Sound*," being marked on the bag, &c. containing the undamaged coffee, and the words "For exportation," being marked on the bag, &c. containing the coffee set apart as damaged; and the officers of excise may call in certain assistants to tare the same.

Account.

By § 79. An account of the quantities of damaged coffee remaining in the original packages, and of all undamaged coffee,

shall be taken by the proper excise officers, and a copy delivered to the proprietor of the coffee. 4 G.4. c.24.

§ 76. Regulates the notice to be given by the excise officer to the proprietor of coffee of the time intended for the separation of the damaged from the sound parts, and the re-survey thereof, on complaint of importer. Notice of separating sound coffee.

Damaged coffee is not to be delivered out of warehouse till re-packed for exportation in casks of not less than 100lbs. except by permission of the commissioners, and giving security of 10*l.* *per cwt.* that the same shall be duly exported. *Id.* Repacking.

§ 77. Where the damaged parts of any particular parcel of coffee shall in the whole be less in quantity than 100lbs. net, the same may be mixed with other damaged coffee, to make up the quantity of 100lbs. Mixing.

§ 78. To preserve the identity of the packages in which coffee is imported, it is enacted, that on separation of coffee, the damaged parts, in the first place, shall be put into the packages in which the same were imported, beginning with the lowest number, and following in regular numerical order; and the proprietor may enter and pay duty for undamaged coffee for home consumption, and remove same from the warehouse, though the quantity thereof, in any one bag of any consignment be less than 100lbs. weight. Identity of coffee packages.

Stat. 35 *G.*3. *c.*118. § 12. After weighing and account taken of coffee or cocoa-nuts, the importer, &c. in the presence of the officer, may take samples, not exceeding four ounces, and not more than three samples, out of each cask, &c., and if he shall take a second or third sample, he shall return those previously taken, or a quantity equal in weight. 35 G.3. c.118. Samples may be taken.

§ 14. 15. When any importer, &c. intends to take out of such warehouse any coffee or cocoa nuts, he shall give previous notice in writing to the officer, if for home consumption one hour, if for exportation twelve hours, before it shall be taken out, specifying the casks, &c. and their landing, numbers, and marks; and shall, within one hour afterwards, bring the same to be weighed, and forthwith pay down the duty for that taken out for home consumption, according to such weight. And the turn of the scale shall be in favour of the crown, and in lieu thereof, and of all loss or damage whatsoever, shall be allowed 1lb. upon every 100lbs. of coffee, and 2lbs. upon every 100lbs. of cocoa nuts. Regulations for taking coffee and cocoa nuts, &c. out of warehouses. Allowance for turn of the scale.

§ 16. Coffee or cocoa nuts may be delivered from any such warehouse for home consumption, on producing certificates of the payment of the duties of customs and excise, and a permit for the removal thereof shall be granted. But the same shall not be delivered out either for home consumption or exportation, in less than the entire cask, &c. in which it was imported or re-packed, and not less than 112lbs. weight. When delivered for home consumption, and a permit granted.

By stat. 5 *G.*3. *c.*43. § 35. The importer of any coffee, tea, or cocoa nuts, within thirty days after the master or purser shall or ought to have made the ship's report at the custom-house, shall make due entry thereof with an officer of excise appointed by the commissioners, and land the same, to be put into warehouses, on pain of forfeiting all such coffee, tea, &c. with the package, which may be seized by any officer of excise. 5 G.3. c.43. Tea, coffee, and cocoa nuts to be entered and warehoused.

§ 36. Provided, that this shall not extend to any coffee or tea imported by the *East India* company.

10 G. 1. c. 10.

By stat. 10 *G.* 1. *c.* 10. § 27. If any person shall import any coffee, tea, or cocoa nuts, which ought to be secured in warehouses, and shall not make due entries thereof, and bring the same into such warehouse, the same shall be adjudged to be clandestinely run and unlawfully imported, and may be seized by any officer of customs or inland duties, and shall be forfeited, with the packages thereof, and the horses, carts, and other carriages made use of in carrying the same.

58 G. 3. c. 76. Tea unshipped in G. B. without due entry, shall be forfeited, and the offenders shall forfeit 10*l.* for every lb. of tea, or 100*l.* at election of prosecutor.

By stat. 58 *G.* 3. *c.* 76. § 3. If any person shall import, unship, or land in *G. B.*, or within the limits of any of the ports thereof, any tea, and shall not make due entries thereof, so that the duties of customs and excise be secured and paid, all such tea so imported shall be deemed and is hereby adjudged to be clandestinely run, and shall be forfeited, and may be seized by any officer of customs or excise; and the person so offending, or aiding or assisting therein, or removing, receiving, harbouring, or concealing any run tea, shall, for each and every such offence, severally forfeit and lose the sum of 10*l.* for every pound weight thereof, or the sum of 100*l.* at the election of the attorney general, or the person who shall sue or prosecute for the same; and no such penalty shall be mitigated by any justice or justices below one fourth-part thereof.

59 G. 3. c. 53. Tea unlawfully landed, &c. to be charged with duty at the rate of the preceding sale of tea by the E. I. Co.

And by stat. 59 *G.* 3. c. 53. § 18. Whenever any tea imported into *G. B.* shall be unlawfully landed, or shall be fraudulently taken or carried away out of any ship or vessel, or any warehouse, storehouse, or place in which the same has been lodged or put without payment of duty, or shall be allowed or ordered to be sold as salved, or as forfeited and condemned goods, the amount of duty which attached on the importation thereof shall be computed, and where such duty is by law payable, shall be paid at the same rate or price at which tea of the best quality of the like kind was sold at the last preceding sale of tea by the *East India* company.

43 G. 3. c. 129. A permit to be given as herein directed, as to coffee, tea, and cocoa nuts.

And by stat. 43 *G.* 3. *c.* 129. § 3. Upon the delivery out of any warehouse of any coffee, tea, or cocoa nuts expressed in such warrant or certificate, the proper officer of excise shall grant a permit in writing, and signed by him, specifying the weight thereof respectively, and the name of the person to whom, and the place to which the same is intended to be removed, and whether by land or by water, and the intended mode of conveyance; and such officer shall limit and express in such permit the time in which such coffee, &c. shall be removed from such warehouse, and shall be received into the house, warehouse, shop, room, or other place, of the person to whom the same is so permitted to be sent; and if such permit be for the removal of tea, and the tea so to be removed be bohea, congou, souchong, or pekoe tea, then any such tea shall in the said permit be specified under the denomination of BLACK TEA; and if the tea be neither bohea, congou, souchong, or pekoe tea, then such tea shall be specified under the denomination of GREEN TEA.

Coffee, &c. not removed and delivered within the time, shall be taken to be

§ 4. And if any coffee, tea, or cocoa nuts specified in such permit shall be removed from any such warehouse, within the time limited in such permit, and shall not within the time limited in such permit be actually delivered, and received into the house, &c. of the person to whom the same is by such permit authorised

to be sent; then all such coffee, &c. so removed as aforesaid, shall be deemed and taken to be coffee, &c. removed without permit. 43 G.3. c.129. removed without permit.

By stat. 10 *G.*1. *c.*10. § 26. If the coffee or tea are intended to be taken out for exportation, they shall be delivered out on security given that they shall be exported, and not re-landed; which security shall be discharged on a certificate under the common seal of the chief magistrate in any place beyond the seas, or under the hands and seals of two known *British* merchants then there, that the same were there landed, or on proof by credible persons that they were taken by enemies, or perished in the seas. 10 G.1. c.10. Taking out of the warehouse coffee and tea for exportation.

By stat. 18 *G.*2. *c.*26. § 5. No drawback shall be allowed on tea exported. But by stat. 43 *G.*3. *c.*69. *Sched.* (C.) for all teas for which the duties imposed in respect thereof shall have been paid, and which shall be duly exported as merchandise directly from the warehouses in which the same shall have been lodged according to law, upon the importation thereof to *Ireland*, or the plantations in *America*, or the United States of *America*, or to the islands of *Jersey*, or *Guernsey*, or to *Gibraltar*, or to any place on the continent of *Europe*, where there shall be a *British* consul resident for the protection of trade, or to *Africa*, a drawback of all the duties is allowed. 18 G.2. c.26. 43 G.3. c.69. Drawback for tea.

By stat. 21 *G.*3. *c.*55. § 10. 11. The cocoa-nuts shall not be taken out of the warehouse, but upon payment of the inland duties aforesaid; that is to say, the importer or proprietor (within the bills,) shall make entry with the receiver or collector there of the quantity he intends to take out, and pay down the duty; (and elsewhere, shall make entry at the next excise office, and pay the duty.) And on producing a certificate signed by such receiver or collector (certifying that he has received the said inland duty), to the warehouse-keeper, he shall deliver out so much as is mentioned in the certificate, and shall give a permit to accompany the cocoa-nuts so delivered out, which shall also be signed by the officer attending the warehouse, to prevent the seizing thereof. And the garble of all such cocoa-nuts, when garbled and secured in the warehouse, shall by order of the commissioners of excise be removed out of the warehouse by the officers attending the same, and forthwith burnt or otherwise destroyed. 21 G.3. c.55. Taking out of the warehouse cocoa nuts either for home consumption or exportation.

§ 12—15. And the cocoa-nuts for which the duty has been paid, or the chocolate made of such cocoa-nuts, may be exported, on security given that they shall not be relanded. And on oath made by the exporter that the said duties have been paid, the excise officer at the port of exportation shall give a certificate of the quantity and kind, and that the same was shipped in his presence, and that sufficient security has been given; whereupon the collector of excise of that district shall pay back four-fifths of the said inland duty. Cocoa nuts and chocolate may be exported.

By stat. 27 *G.*3. *c.*13. § 12. Every person who hath paid all the duties for any of the said commodities, or who shall be the owner thereof, may export the same on the terms following (*viz.*) giving 12 hours' notice within the limits of the chief office, elsewhere 24 hours, of his intention to pack up the same, and of the time and place, to the officer of excise, who shall attend to see the same packed up; and such officer shall secure the same with such seal 27 G.3. c.13. Regulations to be observed on exportation.

27 G.3. c.13. or mark, and in such manner as the commissioner shall direct. And if any person shall open such package, or wilfully destroy or deface such seal or mark, he shall forfeit 20*l*.

§ 13. And if such person shall not begin to pack up such goods at the time mentioned in such notice, or within one hour, such notice shall be void, and such person shall be obliged to give a fresh notice.

Re-landing. § 15. Provided, that if, after the shipping any such goods, and bond given in order to obtain a drawback of the duties, the said goods or any part thereof shall be re-landed, or put into any other vessel (shipwreck, or other unavoidable accident excepted), that then, over and above the penalty of such bond, the said goods or the value thereof shall be forfeited, and may be seized by any officer of excise or customs.

10 G.1. c.10. **What quantity shall be taken out at a time.** By stat. 10 *G*.1. *c*.10. § 34. No seller or dealer in coffee, tea, or cocoa nuts shall receive out of the warehouse less than 1 cwt. of each sort at one time; except where the importation and delivering in shall be in less quantities, or where the same shall be sold in lots or parcels less than 1 cwt. of each sort.

Warehouse-keeper and officer to keep an account. § 29. And the warehouse-keeper and officer appointed by the commissioners of the inland duties, and of customs, shall each of them keep a book, wherein they shall enter an account of all coffee, tea, and cocoa nuts brought into and carried out of the warehouse, and the day and time when, and how much was delivered for home consumption, and how much for exportation, and the names of those for whom it was delivered out; and shall, every six months, or oftener if required, transmit an account thereof in writing and on oath to the respective commissioners, with an account how much is remaining in the warehouse: which said commissioners shall within one month appoint a person to inspect the books and warehouses, and examine the accounts: and if it shall appear that any coffee, tea, or cocoa-nuts was otherwise delivered out, or before payment of the inland duties on the coffee and tea sold for home cansumption, or giving security for what was delivered for exportation, the warehouse-keeper and officer respectively offending shall forfeit 100*l*. and also be disabled to hold any public office.

21 G.3. c.55. **Damaged coffee or cocoa nuts.** By stat. 21 *G*.3. *c*.55. § 17. No damaged coffee, which cannot be sold at a public sale for 1*s*. 6*d*. a pound, nor cocoa-nuts for 1*s*. a pound, shall on any account be sold to be consumed in this kingdom, but shall be secured in warehouses, and not taken out till security be given for the exportation thereof (as to the security, see *ante*.)

Allowance to the officer for seizing coffee, chocolate, cocoa-nuts, or cocoa paste. § 18. Where any officer of excise shall have seized, as forfeited, any coffee, chocolate, cocoa-nuts, or cocoa-paste, the commissioners shall allow him one-third of the full sum that shall arise from the sale thereof after condemnation: Provided, § 19, that if at public sale the same be sold [*Note, the sense seems to require that the word* "not" *ought to have been inserted, so as that the sentence should have run,* "if at public sale the same be *not* sold"] for 1*s*. a pound, the same shall not in anywise be sold, but shall be burned or otherwise destroyed; and the officer shall be rewarded as the commissioners shall think fit, not exceeding 6*d*. for each pound respectively so burned or destroyed. *Vide* 56 *G*. 3. *c*. 104. § 7. ante, *p*. 9.

But by stat. 12 *G*.1. *c*.28. § 6. No officer of the customs or other person shall be entitled to any reward for any seizure of the said goods, unless he give notice of the seizure to the next officer of excise, or supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be removed without a permit from such officer of excise, or supervisor, on pain of re-seizure. 12 G.1. c.28. Notice of seizure.

By stat. 11 *G*.1. *c*.30. § 4. Every person who shall keep a public-house, shop, cellar, or other warehouse for selling brandy or other spirituous liquors, and shall have in his custody for his use any coffee, tea, chocolate, or cocoa-nuts, above six pounds weight, of any kind, shall be deemed a dealer in the said commodities. 11 G.1. c.30. Who shall be a dealer in coffee, tea, and chocolate.

By stat. 21 *G*.3. *c*. 55. § 29. If the officer of excise shall find any increase of the stock of any dealer over and above what the officer found in his last survey, such increase shall be deemed to be made by a commodity for which no duty has been paid; and so much of the said stock as shall be found increased shall be forfeited, and taken by the officer of excise discovering the same, and the person in whose stock the increase shall be found shall also forfeit 20*l*. 21 G.3. c.55. Dealer fraudulently increasing his stock.

By stat. 18 *G*.2. *c*.26. § 6. The commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the duty shall be ascertained; and to prevent mistakes the said officers may inspect the company's books. 18 G.2. c.26. Sales of tea.

§ 7. Every person declared the best bidder at such sale shall within three days after deposit with the company or their clerk 40*s*. for every tub and chest of tea, on pain of six times the value of such deposit, and such sale shall be void, and the same shall in 14 days after be put up again: and such buyer shall be incapable of bidding for, or buying any teas at any future public sale. And by the 13 *G*.3. *c*.44. § 2. the deposit for every tub and chest of bohea tea shall be 4*l*. 13 G.3. c.44. Deposit.

And by the said stat. 13 *G*.3. *c*.44. § 3, 4, 5, 6. The commissioners of the treasury may grant licence to the *East India* company to take out of the warehouse (without the same having been put up to sale), and to export to any of the *British* plantations in *America*, or to foreign parts, such quanties of tea as they shall think proper, discharged from the payment of any duties or customs whatsoever. Provided, that no such licence shall be granted, unless it be made appear to the said commissioners that there will be left remaining in the warehouses a quantity of tea not less than ten millions of pounds weight. Tea may be exported.

By stat. 12 *G*.3. *c*.46. § 5. No tea above the quantity of six pounds weight shall be removed from any part of this kingdom, by land or water, without such a permit, expressing also the quality, whether black or green, on pain of forfeiting the tea, together with the package in which contained. 12 G.3. c.46. Above 6lbs. of tea not to be removed without a permit.

By stat. 21 *G*.3. *c*.55. § 26. If any tea exceeding six pounds weight shall be found removing from one part of this kingdom to another, unless at such times as hereinafter mentioned, *viz*. from 29th *September* to 25th *March*, between seven in the morning and five in the evening; and from 25th *March* to 29th *September*, between five in the morning and seven in the evening (except the same is removing by a known common stage coach, waggon, or other 21 G.3. c.55. Tea to be only removed at certain hours.

21 G.3. c.55. carriage, which usually travel out of those hours), the said tea, and the package containing the same, whether accompanied with or without a permit, and all cattle and carriages made use of in removing the same, shall be forfeited, and may be seized by any officer for the inland duties upon tea.

24 G.3. c.47. Tea seized need not be sent to London. By stat. 24 *G.3. sess.2. c.47.* §31. All tea seized any where in *England*, and condemned according to law, shall be sold publicly to the best bidder, at such places as the commissioners shall think proper, without requiring such tea to be sent to *London*.

21 G.3. c 55. Dealer returning tea. By stat. 21 *G.3. c.55.* § 24. If any dealer, having received any tea into his stock, shall, within twenty-four hours after such receipt, see cause to return the same, he shall give twelve hours' notice to the officer of excise, expressing the cause of return; and the officer shall attend, and after he shall have examined the tea, and taken an account thereof, the dealer shall immediately, in his presence, repack it, and in half an hour after his arrival, the officer shall grant a permit for returning the same; and if the dealer shall return the same without a permit, or be guilty of any fraud relating thereto, he shall forfeit 100*l.*

Officers may take samples. § 25. When any dealer in tea shall have taken out a permit for removing tea from his own stock to the stock of any other like dealer, the officer may take a sample (not exceeding two ounces nor less than one, to be sealed by the trader in the presence of the officer) out of each parcel so intended to be removed, paying for the same according to the price that such tea is then commonly sold for: And if such dealer shall refuse to permit the officer to take such sample, or shall deliver a sample not being the very tea so to be sent away, he shall forfeit 20*l.*

22 G.3. c.68. By stat. 22 *G.3. c.68.* § 21. 24. No tea whatever shall be removed from any part of this kingdom, not being within the limits of the weekly bills of mortality, or of the chief office of excise in *London*, to any place within the said limits, on pain of forfeiting the tea, together with the packages containing the same, and the vessels and boats, horses, and other cattle, and carriages employed in removing the same, which may be seized by any officer of excise. But nothing herein shall prevent dealers in tea, who shall have received any tea accompanied with an authentic permit, from returning the same, for the cause and in the manner directed by 21 *G.3. c.55.* § 24.

20 G.3. c.35. By stat. 20 *G.3. c.35.* § 14—16. No person shall trade in or sell any coffee, tea, or chocolate, without first taking out a licence for that purpose, for which he shall pay [by 43 *G.3. c.69. sched.* A.] 5*s.* 6*d.*, and by 55 *G.3. c.30.* 5*s.* 6*d.* additional (*a*); the same to be granted, if within the limits of the chief office of excise in *London*, under the hands and seals of two commissioners, or of such persons as they shall appoint; elsewhere, under the hands and seals of the collectors and supervisors of excise respectively; such licence to be renewed annually, ten days at least before the expiration of the former. And if any person shall trade in or sell any coffee, tea, or chocolate, without such licence, he shall forfeit 20*l.* Provided that persons in partnership and carrying on such

Licence to be renewed annually.

(*a*) The duties by 43 *G.3. c.69.* are granted without limitation of time; those by 55 *G.3. c.30.* are to continue until 5th *July*, 1826, by 3 *G.4. c.27.*

business in one house or shop only, shall not be obliged to take out more than one licence; and that no licence shall empower any person to sell the same in any other house or place than that wherein he shall dwell at the time of granting such licence. 20 G.3. c.35. Persons in partnership.

By stat. 53 *G*.3. *c*.103. Upon the death or the removal of any person from the house or premises in which his licence shall authorise him to trade in, vend, or sell coffee, tea, cocoa-nuts, or chocolate, any one of the commissioners of excise, or the proper collector and supervisor, may authorise the executors, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade during the residue of the term for which such licence was granted. 53 G.3. c.103. Transfer and renewal of licence.

By stat. 59 *G*.3. *c*.53. § 20. After 5 *July*, 1819, every person duly licensed to deal in, retail, and sell coffee, shall be thereby licensed and authorised to deal in, retail, and sell pepper; and if any person shall have or receive for sale, or deal in, retail, and sell pepper, not being pepper called *Cayenne*, *long pepper*, or *Guinea pepper*, without being duly licensed to deal in, retail, and sell tea and coffee, he shall forfeit 50*l*. 59 G.3. c.53. Persons licensed to deal in coffee may deal in pepper.

By stat. 10 *G*.1. *c*.10. § 10. Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and other person dealing in coffee, tea, or cocoa-nuts, or making or selling chocolate, either by wholesale or retail, shall before he take any of the said goods into his possession, make entry in writing of all storehouses and other places intended to be used by him for the keeping the same at the office for the division; on pain of forfeiting 200*l*. and the said goods found therein, with the canisters, bags, vessels, and other package. 10 G.1. c.10. Houses of manufacturing and sale to be entered.

By stat. 18 *G*.2. *c*.26. § 8. No entry of any shop, warehouse, room, or utensil for carrying on any trades aforesaid shall be deemed a legal entry, unless made in the name of the real owner of and trader in such shop; and the person who acts as visible owner of such place, or principal manager in such trade, shall be deemed the real owner and trader, and consequently liable for any stock found there, or for not making entries, or other offences. 18 G.2. c.26.

And by stat. 10 *G*.1. *c*.10. § 14. and 12 *G*.3. *c*.46. § 6. None of the said goods shall be offered to sale but in places entered, or in a warehouse to be approved of by the commissioners; on pain of forfeiting the same, and also 10*l*. 10 G.1. c.10. 12 G.3. c.46.

By stat. 19 *G*.3. *c*.69. § 18. Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and every other person selling or dealing in coffee, tea, cocoa-nuts, or chocolate, shall cause to be painted or written, in large legible characters, over the door of each place, the words *dealer in coffee, tea, cocoanuts*, or *chocolate*, (as the case may be,) on pain of 200*l*. 19 G.3. c.69. Houses to be marked.

§ 19. 20. And if any dealer in tea, coffee, cocoa-nuts, or chocolate, shall buy any of the said goods of any person, not having the words aforesaid so painted or written, he shall forfeit 100*l*. over and above all former penalties: Provided, that such dealer shall not be subject to the said penalty by reason of any purchase or transfer of any tea, coffee, or cocoa-nuts, whilst they remain in the warehouses, according to the act of 10 *G*.1. *c*.10.; nor by reason of any purchase at any sale of the *East India* company;

19 G.3. c.69. or of the commissioners of the customs or excise; or sold for the benefit of the insurers or proprietors, to defray the charges of salvage; nor by reason of any first purchase of any prize teas.

§ 21. And if any person, other than such as have made due entry at the excise office of their several places for keeping any of the said goods, shall paint over his door the words aforesaid, he shall forfeit 50*l.* over and above the penalties for selling or dealing without entry.

§ 22. If any person, not being such importer or dealer, shall buy or procure any other to buy any of the said goods (except as before excepted), not having the afore-mentioned words so painted, &c. he shall forfeit 10*l.*: And if the seller shall, within twenty days, and before any information has been lodged against him, inform against the buyer, or the person procuring to be bought, he shall be discharged from all penalties to which he might be liable for such his own offence.

10 G.1. c.10. Notice of bringing in.

By stat. 10 *G.*1. *c.*10. § 11. No coffee, tea, cocoa-nuts, or chocolate, shall be brought into any such shop or other place, without first giving notice thereof to the officer of the division, and leaving with him a certificate, signed by the officer of the division from whence they were brought, that the duties on such coffee, tea, and chocolate, have been paid, or that they have been condemned as forfeited; and in case of bringing in of cocoa-nuts, that they have been entered with the officers of the customs, or were condemned as forfeited; and expressing the quantity and quality, and where the duties were paid, or at what port the customs and duties were paid for the cocoa-nuts, or were condemned, on pain of forfeiting the same and treble value, with the canisters, bags, and other package.

Permit when sold to the retailer.

§ 15. Where any of them shall be sold in the said entered places above the weight of 6lbs., the officer shall, on request of the seller, give to the buyer a certificate signed by him, expressing the quantity, and the names of the buyer and seller, and that the duties have been paid, or that the cocoa-nuts have been entered with the officer of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof.

Officers to enter and survey.

By stats. 10 *G.*1. *c.*10. § 12.—10 *G.*3. *c.*44. § 1.—28 *G.*3. *c.*37. § 15. The officers shall be permitted, at all times by day, to enter all warehouses, shops, and other places, and by weighing, gauging, or otherwise, to take an account of the quantity and sorts; in the weighing whereof the owner shall be assisting, and keep just weights and scales to be used by the officer, on pain of 100*l.* and forfeiture of the same, which may be seized by any officer.

Weights and scales.

26 G.3. c.77. Deceiving or obstructing the officer.

By stat. 26 *G.*3. *c.*77. § 8. If, in weighing his stock, he put any other substance therein, whereby the officer may be hindered from taking a just account, or shall forcibly obstruct such officer, he shall forfeit 100*l.*

10 G.1. c.10. Search for goods concealed.

By stat. 10 *G.*1. *c.*10. § 13. If any officer shall have cause to suspect that any coffee, &c. shall be concealed, if it be within the bills, then on oath made before two commissioners, or elsewhere before one or more justices, setting forth the ground of his suspicion, they may by warrant authorise such officer, by day or

night, but if in the night then in the presence of a constable, to enter the place suspected, and seize and carry away the same (if found) as forfeited, together with the bags, canisters, and other package; and if any person shall obstruct such officer, he shall forfeit 100*l*. 10 G. 1. c. 10.

§ 39, 40. If any seller or dealer shall conceal any of the said goods, he shall forfeit the same and treble value, with the canisters, bags, and other package; and if any person shall obstruct the officer in seizing any of the said goods by virtue of this or any future act, or after seizure shall endeavour to rescue the same, or shall after seizure break or damage the vessels or package, he shall forfeit 50*l*.

And by stat. 11 *G.*1. *c.*30. § 12. Two commissioners, or any justice, on complaint by an officer on oath, that he suspects any dealer not to have made true entries, setting forth in such oath the causes of his suspicion, may summon such suspected person to appear with his books, and examine him on oath touching the truth of his entry; and if he shall refuse or neglect to appear, or to make such oath, he shall forfeit 20*l*. 11 G. 1. c. 30. On suspicion.

In *Bostock* v. *Saunders*, the court of C.P. decided, that an action of trespass might be maintained against excise officers, who entered the house of the plaintiff (a dealer in tea) under a warrant from the commissioners of excise, granted on the oath of one of the defendants, setting forth the grounds of his suspicion that tea was fraudulently concealed in the house, to defraud the crown of the duties, &c., and which ground the commissioners adjudged to be reasonable, because on the search no such tea was found there. T. 13 *G.*3. 2 *Blac. Rep.* 912. 3 *Wils.* 434. Bostock v. Saunders.

But this opinion not being satisfactory in *Westminster Hall*, the same question was again brought forward, when the above decision was expressly overruled in *Cooper and Cameron* v. *Bool*, in error. *T.* 25 *G.*3. *B.R. M.S.* (*B.*) Trespass in C. P. for breaking and entering the plaintiff's house, &c. The defendant pleaded the general issue; and on the trial a special verdict was found. The plaintiff was a dealer in tea in the parish of *St. James* in *Westminster*. The defendants were officers of excise; and suspecting that goods were fraudulently concealed in the plaintiff's house, they gave information on oath before the commissioners of excise, and obtained their warrant to enter and seize, &c. In pursuance of that warrant they entered the plaintiff's house, and, without his consent, broke open locks, &c., but they found no tea there or other goods liable to be seized. The question was, whether the defendants were justified, not having found any thing there. The court of C. P. not seeing any difference between this case and that of *Bostock* v. *Saunders*, (supra,) gave judgment for the plaintiff, without hearing any argument. It was removed into this court by writ of error; and the case was argued in *E.* 25 *G.*3. by *Wood* for the plaintiffs in error, and *Plumer* for the defendant. The court took time to consider the case, and their opinion was now delivered by Ld. *Mansfield* Ch. J. This comes before the court by a writ of error from the C. P.; that judgment was given upon a special verdict, on which that case appears to be exactly the same as that of *Bostock* v. *Saunders*. On the authority of that case the court of C. P. gave judgment in the present, without hearing it argued. There is no Cooper, &c. v. Boot.

Cooper, &c. v. Boot.

occasion to state the facts now, they being exactly similar in both cases. The great authority of those who gave that opinion has made us deliberate, and turn the matter over and over again in our thoughts. But after all the deliberation we have taken, we cannot bring ourselves to concur in it. We think the excise officer cannot be guilty of a *trespass*, either as procuring or executing this warrant. If he either procured or executed the warrant maliciously or corruptly, on the ground of such motive he may be liable to a special *action on the case*. The question depends entirely on the act of parliament of the 10 *G*.1. *c*.10. § 13. By that act a duty is imposed on officers of excise, who have grounds of suspicion, to lay such grounds on oath before a proper magistrate, described in the act, viz. before commissioners of excise within the bills of mortality, or a justice of the peace in the country. A duty is also imposed on such magistrate to exercise his judgment on those grounds of suspicion, and if he think them sufficient, not otherwise, he is bound to grant a warrant. The judgment of the magistrate on this *ex parte* representation, verified by oath, is decisive as to issuing the warrant. The commissioners of excise undoubtedly had authority in this case; the warrant was clearly legal when it issued; the execution of it clearly legal when executed. Then it seems a solecism to say, that the regular execution of a legal warrant can be a trespass, though a bad motive in doing a legal act, or in executing legal process, may be a subject of a special action. Two objections have been made: first, that the event of not finding such goods as are searched for avoids the warrant in respect of the excise officer, and he is to be considered as a trespasser by relation, acting under no authority. This would repeal the act of parliament. The act is entirely adapted to the case of *probable suspicion*, the objection requires *positive certainty*. The officer does not say he *knows* that the goods are in the house. If a man by warrant be arrested on suspicion of felony, it is not necessary that he should be found guilty on his trial. The case of a writ of assistance is not applicable here; it is no warrant; it is general, and leaves all and every part of the execution to the discretion of the custom house officer. And besides, there is a positive clause in the act of *Car*.2. which makes the justification of the officer depend on the event of finding goods. Supposing a warrant to search for stolen goods to depend on the event of finding them, it must have been introduced as a political rule to prevent abuse, and is not a consequence drawn from principles. But on this point we give no opinion. This act is made expressly for the sake of the public, that the parties may proceed safely on reasonable grounds of suspicion; and the check against abuse is, in the first instance, the judgment of the magistrate. Suppose the goods were actually in the house when the information was made, and taken out immediately before the warrant was executed, is it possible in that case to say, that the officer would be a trespasser? It is adding a clause which the legislature purposely avoided, with the example of such a provision in the stat. 12 *Car*.2. before their eyes. The second objection is,—if it be too much to say that the validity of this warrant depends on the event of finding goods, that the grounds of suspicion ought to be laid before, and the sufficiency of it made appear to the satisfaction of the jury who hap-

pen to try the cause; this equally repeals the act. The officer may be the only person who knows the facts from whence the suspicion arises; and in an action against himself, he cannot give in evidence reasonableness of suspicion; and it would leave so much latitude to the jury, that no officer could be safe. The act was made on purpose to remedy this inconvenience. The oath of the officer is made evidence of the truth of the fact; the reasonableness of suspicion is left to the magistrate to judge of; if it be sufficient, a warrant ought to be granted; if he think it insufficient, it should be refused. The regu ation of the act is agreeable to the principles of justice and policy. The officer in this case is not merely a party, though interested if goods be found, but he acts as a public officer, in the execution of his duty. If he act *bonâ fide*, he ought to be protected. This act chalks out a way in which he may be safe: he swears as to his suspicion, and obtains his warrant; it is not left to the discretion of the officer to search when he pleases, but his power is subject to several restrictions, which there would be no occasion for, if it were requisite either that the goods should be found, or the officer obliged to bring the grounds of his suspicion before the jury. Where an officer acts *malâ fide*, this act will not protect him; he is punishable by an action on the case; and therefore we cannot help being of opinion that the officer in this case is not a trespasser. And though we differ from great authority, we think that the regular execution of a legal warrant is not a trespass; but an officer may be liable to an action on the case for improper conduct. Judgment of C. P. reversed. Cooper, &c. v. Boot.

By stat. 11 *G.*1. *c.*30. § 9. No person in roasting, or soon after roasting, or before selling, shall mix with coffee, to increase the weight, any butter, lard, grease, water, or other materials, on pain of 100*l.*; and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 100*l.* 11 G. 1. c. 30. True manufacturing of coffee.

By stat. 10 *G.*1. *c.*10. § 31. The commissioners for inland duties may appoint houses for roasting coffee-berries, and officers to attend them, and one or more persons at each house well skilled in roasting coffee; to which all persons may resort to have their coffee-berries roasted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roasting of which coffee shall be paid 8*s.* per cwt. 10 G. 1. c. 10. Roasting houses.

§ 32. But the sellers and dealers may send their own roasters, who shall be permitted to roast the same therein, paying 3*s.* per cwt.

§ 33. And during the continuance of such roasting houses, no coffee-berries shall be roasted, burned, or dried, but in some one such house, on pain of forfeiting the same, and 5*s.* a pound.

§ 34. If any officer or roaster duly appointed shall neglect or refuse to attend such house, he shall forfeit 10*l.* for the first offence, and 20*l.* for the second, and be incapable to hold any office in the revenue.

But by stat. 49 *G.*3. *c.*80. (reciting stat. 10 *G.*1. *c.*10.) It is enacted, that after the passing of this act all sellers of and dealers in coffee shall be at liberty to roast their own coffee according to the following regulations, viz. every such seller, being desirous to roast coffee, shall, before he shall roast any coffee, make true entry in writing, at the next office of excise, of one or more rooms for 49 G. 3. c. 80. Dealers in coffee may roast their own coffee on making entry at the next office of excise.

49 G.3. c.80. — Penalty for not making entry, 50*l.*

that purpose, which rooms respectively shall either be adjoining or as near as possible to the places by him entered and made use of for keeping raw coffee; and if any seller, &c. shall roast in any place whereof he shall not have made such entry, he shall, for every such offence, forfeit 50*l.*, together with all the coffee which shall at any time be found in any such place whereof no such entry shall be made: Provided that no seller, &c. who shall at any time receive into his custody or possession any unroasted coffee, less in quantity than 56lbs., except coffee returned to him by any customer for being disliked, shall be at liberty to roast, or put in operation of roasting, any coffee; and if any seller, &c. shall, contrary to this act, roast, or put in operation of roasting, any coffee, he shall, for each offence, forfeit 50*l.* together with all such coffee by him so roasted, &c.

Dealers receiving into their custody unroasted coffee, in less quantity than 56lbs. shall not be permitted to roast coffee. Penalty 50*l.*

Officers of excise may enter the premises of dealers;

§ 2. And it shall be lawful for the officers of excise, at all times, by day and by night, upon his or their request, (but if in the night, in the presence of a constable or other peace officer,) to enter into every room entered or made use of by any such importer, seller, or dealer in coffee, for the purpose of roasting or burning coffee, and to examine, weigh, or take account of all the coffee, either raw, roasting, or roasted, which shall at any time be in any such room, and to remain in any such room during the time that any coffee shall be in the operation of roasting.

and may take samples of coffee. Penalty for refusing samples.

And by § 3. The officers of excise may take, at any time and times, a sample or samples of any coffee, either raw, roasting, or roasted, which they shall at any time find in any such room, paying for every such sample the usual price thereof; and in case any seller, &c. or any workman or servant to him belonging, shall refuse to permit such officer to take such sample or samples as aforesaid, upon his offering to pay as aforesaid, or shall anywise hinder him in taking such sample or samples, such seller, &c. shall, for every such offence, forfeit 100*l.*

51 G.3. c.95. Powers granted by 10 G.1. c.10. not repealed by 49 G.3. c.80.

By stat. 51 *G.*3. *c.*95. § 2. None of the powers granted by stat. 10 *G.*1. *c.*10. to the commissioners for the inland duties on coffee, relating to houses for roasting coffee, or to the money payable for roasting coffee at such houses, are by the 49 *G.*3. *c.*80. repealed.

Penalty on obstructing officers, 100*l.*

By stat. 49 *G.*3. *c.*80. § 5. If any person shall molest or hinder any officer of excise in due execution of this act, or of any of the powers hereby granted, other than in any case for which a penalty is herein-before specifically imposed, he shall, for every such offence, forfeit 100*l.*

How penalties shall be levied and recovered.

§ 7. All fines, penalties, and forfeitures, imposed by this act, shall be sued for, levied, recovered, and mitigated, as any fine, &c. may be recovered or mitigated by any law of excise, or by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, one moiety to H. M., the other moiety to him who shall discover, inform, or sue for the same.

43 G.3. c.129. If any article made to resemble coffee, or cocoa, be found in the possession of

And by stat. 43 *G.*3. *c.*129. § 5. (repealing § 3. of 41 *G.*3. *U.K.* *c.*91. which respected imitations of coffee,) if any burnt, scorched, or roasted peas, beans, or other grain or vegetable substance, prepared for the purpose of being an imitation of, or in any respect to resemble coffee or cocoa, or to serve as a substitute for the same, or pretended by the possessor or vendor thereof

so to be, shall be made or kept for sale, or offered or exposed to sale, or found in the possession of any dealer in or seller of coffee or cocoa, or of [*query*, if?] any burnt, scorched, or roasted peas, beans, or other grain or vegetable substance, not being coffee or cocoa, shall be called by the preparer, possessor, or vender thereof, by the name of *English* or *British* coffee, or any other name of coffee, or by the name of *American* cocoa, or *English* or *British* cocoa, or any other name of cocoa, the same shall be forfeited, together with the packages, and shall be seized by any excise officer; and the person preparing or selling the same, or having the same in his possession, or the dealer in or seller of coffee or cocoa in whose custody the same shall be found, shall forfeit 100*l*.

43 G.3. c.129. any dealer, or called by him English or British coffee, &c. it shall be forfeited, and the dealer forfeit 100*l*.

By stat. 3 *G*.4. *c*.53. § 1. after reciting stat. 43 *G*.3. *c*.129. § 5.: it is enacted, That it shall be lawful for any person, not being a dealer in or seller of coffee or cocoa, to manufacture, deal in, and sell scorched or roasted corn, peas, beans, or parsnips, whole and not ground, crushed, or powdered, under the licence and subject to the regulations and restrictions herein-before mentioned.

3 G.4. c.53. 43 G.3. c.129. Persons not being dealers in coffee may roast and sell corn, peas, beans, or parsnips.

§ 2. Every person who shall manufacture for sale, deal in, or sell any such scorched or roasted corn, peas, beans, or parsnips, shall take out a licence authorising such person to manufacture, deal in, or sell such scorched or roasted corn, peas, beans, or parsnips as aforesaid, which licences shall be granted within the limits of the chief office of excise in *London*, under the hands and seals of two or more of the commissioners of excise in *England*, or of such persons as they shall from time to time direct for that purpose; but out of the limits of the said chief office, the same shall be granted under the hands and seals of the collectors and supervisors of excise, within their respective collections and districts; and within the limits of the city of *Edinburgh* the same shall be granted under the hands and seals of two or more of the commissioners of excise in *Scotland*; or if any such licence shall be granted in any part of *Scotland* out of the limits of the city of *Edinburgh*, then the same shall be granted under the hands and seals of the collectors and supervisors of excise in *Scotland*, within their respective collections and districts; and such commissioners of excise, or two or more of them, and the persons to be directed by the said commissioners of excise in *England*, and also all such collectors and supervisors, are authorised and required to grant such licences to the persons who shall apply for the same, on the person or persons applying first paying the sum of 2*s*. 6*d*. for each such licence.

2*s*. 6*d*. to be paid for each licence.

§ 3. The sums directed to be paid for such licences, shall be paid as herein-after mentioned; that is to say, such thereof as shall be paid for licences taken out within the limits of the chief office of excise in *London*, shall be paid at the chief office of excise in *London*; within the limits of the city of *Edinburgh*, at the chief office of excise in *Edinburgh*; and in any part of *G. B.* not within the said limits, shall be paid to the collectors of excise in whose collections such licences shall be granted.

Payment for licences to whom made.

§ 4. No person shall manufacture, deal in, or sell any such scorched or roasted corn, peas, beans, or parsnips, after the expiration of such his licence, unless such person shall take out a

Licence to be annual.

3 G.4. c.53.

fresh licence 10 days at least before the expiration of such former licence, and so in like manner renew every such licence from year to year; and if any person shall begin to manufacture for sale, deal in, or sell any such scorched or roasted corn, peas, beans, or parsnips, without first taking out a licence authorising him so to do, and renewing the same, as herein-before directed, he shall for every such offence forfeit the sum of 50*l.*: provided that persons trading in partnership, and in one house or shop only, shall not be obliged to take out more than one licence in any one year for manufacturing, dealing in, or selling any such scorched or roasted corn, peas, beans, or parsnips; and no one licence shall authorise any person to manufacture, deal in, or sell any such scorched or roasted corn, peas, beans, or parsnips, in any other house, workhouse, warehouse, shed, room, or other place than the house, workhouse, warehouse, shed, room, or other place, whereof entry in writing shall be made at the office of excise, in the name of such person, at the time of granting such licence.

Penalty 50*l.*

Application of duty on licences.

§ 5. All the monies arising by the licences shall be paid into the receipt of H. M.'s exchequer at *Westminster*, and carried to the consolidated fund.

Entry to be made of premises, and roasted corn to be sold whole, and in packages.

§ 6. Before any person shall begin to manufacture for sale, or deal in, or sell any such scorched or roasted corn, peas, beans, or parsnips, he shall make a true and particular entry in writing, according to the laws in respect to excise entries of places, of every house, room, and place, and of every utensil, by him made use of, or intended to be made use of, in or for the scorching or roasting or keeping of scorched or roasted corn, peas, beans, or parsnips for sale, at the office of excise, within the limits whereof such house, room, or place shall be situate, and shall be subject to the survey of the officers of excise, in like manner as coffee-dealers; and every such person shall, as soon as any such corn, peas, beans, or parsnips, has or have been scorched or roasted, put and make up the same whole, and not ground, crushed, or powdered, and unmixed with any other article or ingredient whatsoever, in packages, and stamp or mark the cover of every such package with the words "*roasted corn, peas, beans, or parsnips,*" as the case may be, and with his name and place of residence; and shall not have or keep, or sell or offer to sell or deliver, any scorched or roasted corn, peas, beans, or parsnips under any other name or description whatever than scorched or roasted corn, peas, beans, or parsnips, as the case may be, or in any other state or condition than whole, and not ground, crushed, or powdered, or mixed with any other article or ingredient, or otherwise than so made up into such packages so marked, on pain of forfeiting for each offence the sum of 50*l.*, together with all the corn, peas, beans, or parsnips, and other articles or ingredients mixed or of the like kind as are mixed therewith, and also the utensils for the scorching or roasting corn, peas, beans, or parsnips, which shall at any time be found in any house, room, or place so made use of or intended to be made use of as aforesaid, and whereof no such entry shall be made, or which shall be in the possession of any such person not licensed, or had or kept by him, or sold or delivered, otherwise than as aforesaid; and the same shall be seized by any officer of excise: Nothing herein contained shall repeal or alter the act or provisions herein-before recited, in any other

Penalty for selling roasted corn under any other name, 50*l.*, &c.

respect, manner, or degree than is and are expressly provided by this act. 3G.4. c.53.

§ 7. It shall be lawful for any person licensed to deal in cocoa, who shall first make entry of his premises, for the purpose hereinafter mentioned, at the nearest office of excise, and who shall not be a scorcher or roaster of corn, peas, beans, or parsnips, or a dealer in or seller of scorched or roasted corn, peas, beans, or parsnips, or have in his possession any such corn, &c., to make and manufacture in such premises, and with the knowledge of the proper officer, cocoa paste, broma, and other mixtures and preparations of cocoa with sugar and arrow-root flour or other farinaceous powder, such arrow-root flour or other farinaceous powder not being baked, scorched, roasted, or altered from its natural state, except by being mixed with cocoa as aforesaid, and to sell such cocoa paste, broma, or other mixture: Provided that every such person shall enclose all such cocoa paste, broma, and other such mixtures and preparations of cocoa, as soon as the same is made, and before the same is sold, offered, or exposed for sale or delivered, in paper sealed and stamped, or in some pot or other vessel to which a stamp shall be affixed in such manner as the commissioners of excise shall direct, and which stamp the commissioners of excise shall furnish and cause to be delivered to every such person upon his request; and upon such person paying to such commissioners for such stamps so to be used *sixpence* for every stamp to be attached to a pound weight, and *three-pence* for every stamp to be attached to half a pound weight, and *three halfpence* for every stamp to be attached to every quarter of a pound weight of all such cocoa paste, broma, or other mixtures as herein described; and if any person shall make or manufacture any cocoa paste, broma, or other mixture or preparation of cocoa as aforesaid, without first making such entry, or shall mix with any cocoa any baked, scorched, or roasted material whatsoever, or any ingredient whatsoever, except as aforesaid, or shall keep, offer for sale, sell, or deliver any such preparation of cocoa, otherwise than in the manner and enclosed in the paper or pot, containing not less than one quarter of a pound, or more than one pound, stamped as aforesaid, or shall use any such stamp or paper a second time, or imitate or use any stamp for the purpose aforesaid, which shall not have been issued by or by the order of the commissioners of excise, or shall use any art or contrivance by which the officer surveying such premises shall be prevented or deceived in taking a true account of all such compound cocoa, broma, or other mixture of cocoa with sugar and arrow-root flour, or other unbaked, unscorched, unroasted, and undisguised farinaceous powder as aforesaid, or shall obstruct or hinder such officer in taking such account, every such person and persons in such cases respectively offending shall for every such offence severally forfeit the sum of 100*l.*

Persons licensed to deal in cocoa, not being a roaster of corn, may, on being licensed, manufacture cocoa paste, broma, and other mixtures of cocoa.

Cocoa paste, &c. to be put up in paper or put in a pot, and a stamp to be affixed:

6*d.* stamp to a lb. — 3*d.* for a ½ lb. — and 1¼*d.* for ¼ lb.

Penalty for not conforming to the directions herein given, 100*l.*

§ 9. All powers, directions, rules, penalties, forfeitures, clauses, matters, and things, which by stat. 12 *C.*2. *c.*24., or by any other law now in force relating to excise, are provided, shall be put in execution for the managing, raising, levying, collecting, mitigating, recovering, and paying the licence duty of excise by this act imposed, and for preventing all breaches of the regulations hereby imposed.

11 G.1. c.30. Saving for former excise laws. True manufacturing of tea. By stat. 11 *G*.1. *c*.30. § 5. No dealer in tea, or manufacturer or dyer thereof, or pretending so to be, shall counterfeit or adulterate it, or alter or manufacture it with any drug, or mix it with any leaf or other ingredient, on pain of forfeiting the same and 100*l*.

41 G.3. c.91. By stat. 41 *G*.3. *c*.91. § 4. If any commodity shall be seized as manufactured in imitation of or to resemble coffee, or to serve as a substitute for coffee, or if any action shall be brought by the owner or claimer against any officer of excise, or any person acting in his assistance, for such seizure, the proof that the commodity so seized is not manufactured in imitation of or to resemble coffee, shall lie upon the owner or claimer, by the oaths of two credible witnesses.

4 G.2. c.14. By stat. 4 *G*.2. *c*.14. § 11. If any dealer in or seller of tea shall dye or manufacture any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or the leaves of any other tree, shrub, or plant, in imitation of tea, or shall mix, colour, or stain, with *terra japonica*, sugar, molasses, clay, logwood, or any other ingredients; or shall sell, or offer to sale, or have in his custody, any such leaves in imitation of tea, or any such stained leaves, or tea mixed with any other ingredient, he shall forfeit for every pound weight thereof 10*l*.

17 G.3. c.29. Dying or manufacturing in imitation of tea, any leaves of tea that have been used, &c. or selling or offering to sell the same, &c. By stat. 17 *G*.3. *c*.29. § 1. If any person, whether he be a dealer in or seller of tea or not, shall dye or manufacture any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or the leaves of any ash, elder, or other tree, shrub, or plant, in imitation of tea, or shall mix or colour any such leaves with *terra japonica*, copperas, sugar, molasses, clay, logwood, or any other ingredients, or shall sell or offer to sale, or have in his custody, any such leaves dyed or manufactured, or dying or manufacturing, in imitation of tea, and shall be thereof convicted upon the oath of one witness, before one justice, he shall, for every pound of such leaves so dyed or manufactured, or dying or manufacturing, in imitation of tea, and for every pound of such mixed, stained, or dyed leaves of tea, forfeit 5*l*.; and on non-payment thereof, such justice shall commit him to the common gaol, for any time not exceeding twelve months, nor less than six, or until the penalty and charges shall be paid. Penalty.

Having more than six pounds of such leaves in possession. Exception. § 2. If any person shall have in his custody any quantity (exceeding 6lbs. weight) of sloe leaves, or the leaves of ash, elder, or any other tree, shrub, or plant, green or manufactured, and shall not prove, to the satisfaction of the justice before whom the matter shall be heard, that such leaves were gathered with the consent of the owner of the trees, shrubs, or plants from which the leaves were taken, and that such leaves were gathered for some other use, and not for the purpose of manufacturing them in imitation of tea, and shall be convicted thereof by the oath of one witness, before one justice, he shall, for every pound of such green or manufactured leaves so found in his custody, forfeit the sum of 5*l*.; and on non-payment thereof, the justice shall commit him to the common gaol, for any time not exceeding twelve months, nor less than six, or until the penalty and charges shall be paid. Penalty.

Officer making oath before justice that he suspects such leaves concealed. § 3. If any excise officer or other person shall have cause to suspect that any such leaves dyed or manufactured, or dying or manufacturing, in imitation of tea, or intended so to be dyed or manufactured, shall be concealed or lodged in any place; in such

case, on oath made before a justice, setting forth the ground of his suspicion, the justice may, if he judge it reasonable, by his special warrant, authorise such officer or other person, by day or night, but if in the night, then in the presence of a constable, to enter such place, and to seize and carry away as forfeited all such leaves, together with all the waggons, carts, boxes, bags, tubs, or other vessels or packages containing the same: And the said justice, or any other justice where such seizure shall be made, shall, on proof of the premises by the oath of one witness, by his warrant, order the leaves so seized to be conveyed to some convenient place, and there to be burned or otherwise destroyed; and shall order the said waggons, &c. containing the same to be forthwith sold, and the money arising by such sale, after deducting the charges of seizure and sale, and of the burning or otherwise destroying the leaves, to be paid half to the informer and half to the poor. And if any person shall obstruct such officer, he shall forfeit 50*l.* on conviction, by the oath of one witness, before one justice; and on non-payment, the justice shall commit him to the common gaol for any time not exceeding twelve months, nor less than six, or until the penalty and charges shall be paid.

17 G.3. c.29. Search warrant.

All such leaves so found, destroyed, &c.

Obstructing officers in search, &c. Penalty.

§ 4. Provided that no such green and unmanufactured leaves shall be burned or otherwise destroyed, if the owner thereof shall, within 24 hours after seizure, prove, to the satisfaction of the justice, that the said leaves were gathered with consent of the owner of the trees, shrubs, or plants, and that they were gathered for some other use, and not for the purpose of dying or manufacturing them in imitation of tea, in which case the said leaves, carriages, and package shall, by order of such justice, be restored.

Certain cases in which leaves found concealed not destroyed, &c.

§ 5. And all such leaves shall be deemed in the custody of the occupier of the house or place where the same shall be found; and such occupier shall be liable to all the penalties by this act inflicted on persons having such leaves in their possession, if it be proved, to the satisfaction of the justice, that such leaves were lodged there with the privity or consent of the said occupier.

In what case occupiers of houses, &c. wherein leaves found, liable to penalties.

§ 6. 7. The said forfeitures shall be distributed one half to the informer, and the other half to the poor of the parish or place where the offence shall be committed; in which case, nevertheless, an inhabitant of the parish where the offence shall be committed may be a witness.

Application of forfeitures.

Parishioners to be evidence.

§ 9. The conviction shall be written on parchment or paper in this or the like form. *Be it remembered, that on the* ——— *day of* ———, *in the* ——— *year* ———, A. O. *was upon complaint of* A. I. *convicted before me, one of the justices of the peace for* ———, *in pursuance of an act passed in the seventeenth year of the reign of his majesty king* George the third, *for* [Here set forth the offence]. *Given under my hand and seal the day and year above-written:* which conviction shall be certified by the justice to the next sessions; and shall not be quashed for want of form, nor removed by *certiorari* into H. M.'s court of K. B.

Convictions certified to quarter sessions.

As to the true manufacturing, stamping, tying up of chocolate in proper quantities, and as to making it for private families from not less than half a cwt. of cocoa-nuts at one time, see stats. 10 G.1. *c.* 10. § 17, 18. 22—25. 11 *G.* 1. *c.* 30. § 13. 32 *G.* 2. *c.* 10. § 16, 17. 27 *G.*3. *c.*13. § 35. *c.*31. § 26.

True manufacturing, stamping, tying up, &c. of chocolate, and making it for privat use.

9 G.2. c.35. Penalty of retailing tea without a permit, or pedlars with one.

By stat. 9 *G.*2. *c.*35. § 30. If any person shall offer any tea to sale, not having a permit, or if any hawker, pedlar, petty chapman, or other trading person, going from town to town or other men's houses, and trading either on foot or with any horse or other cattle or otherwise, shall offer any such tea to sale, although he have a permit, the person to whom it is offered to sale may seize and detain the same, and carry it to the next warehouse belonging to the customs or excise, and bring the person before a justice of the peace, to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such tea may be prosecuted in the name of the person who stopped or seized the same, in like manner as if it had been seized by an officer: And after condemnation and commitment, the person seizing shall have one-third of the gross produce by sale; and if he desire it, the commissioners shall in the mean time, till the goods can be publicly sold, cause 1*s.* for every pound of tea, &c. to be advanced to such person, upon certificate of the justice of the commitment.

10 G.1. c.10. Permit on removal.

By stat. 10 *G.*1. *c.*10. § 16. No coffee, tea, cocoa-nuts, or chocolate, above 6lbs. weight, shall be removed from any part of the kingdom without a permit signed by an officer, signifying the names and places of abode of the buyer and seller, and the quantity and species of the goods, and that the inland duty hath been paid, or the cocoa-nuts entered as aforesaid, or that they have been condemned as forfeited, on pain of forfeiting the same, together with the canisters, bags, or other package; which permit shall be left with the officer of the division to which the same shall be carried, to prevent the seizure thereof; in which permit shall be expressed the time for which it shall continue in force.

52 G.3. c.149. 1 G.4. c.59.

By stat. 52 *G.*3. *c.*149. § 6. & 1 *G.*4. *c.*59. Until 25th *March*, 1825, no coffee of the quantity of eight pounds weight or under, nor any canisters, bags, jars, tubs, boxes, casks, or other vessels or packages containing the same, shall be liable to forfeiture for being found carrying or carried without the permit or certificate mentioned in 10 *G.*1. *c.*10.

11 G.1. c.30.

By stat. 11 *G.*1. *c.*30. § 10. If any person shall take out a permit for removing coffee, tea, or cocoa-nuts, and shall not send away the goods within the time limited, nor return the permit, he shall forfeit treble value; and if there shall not appear a sufficient decrease made in the stock to answer the quantity in the permit, the officer may seize so much of the said stock as forfeited, as will answer the said quantity in the permit: but no person shall receive a permit without the direction in writing of the person (or his servant) from whose stock the goods are to be removed, on pain of 50*l.*; and in default of payment he shall be imprisoned three months.

10 G.1. c.10. Account to be kept of small quantities consumed.

By stat. 10 *G.*1. *c.*10. § 35. All sellers and dealers in any of the said goods, and all makers of chocolate and coffee, or chocolate-house keepers, who shall consume the same in small quantities under 6lbs., shall keep an account of all coffee, tea, chocolate, and cocoa-nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them in that day in small quantities under 6lbs.; and shall keep another book wherein they shall enter each parcel above 6lbs. which they shall sell in each day, which last shall not be removed

without a permit from the officer, expressing the quantity and quality, and the name of the seller and buyer, and whither it is to be carried, and that the duties were paid, or the cocoa-nuts entered, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to such sellers and dealers; and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the said books shall from time to time lie open, and be perused by the officer; and such seller or dealer shall, on neglect or fal.e entry made, forfeit 100*l*. 10 G.1. c.10.

By stat. 53 *G*.3. *c*.88. § 1. No verification on oath, as mentioned in 10 *G*.1. *c*.10. § 35. shall be made or required; and when any of the books therein mentioned shall be returned to the officer, the truth of the entries made in every such book so returned shall be verified upon the declaration in writing of, and subscribed by the seller of or dealer in coffee, tea, cocoa-nuts, or chocolate, in the presence of such officer; and if any dealer in coffee, tea, cocoa-nuts, or chocolate, shall neglect or refuse to verify upon his declaration the truth of the entries made in any such book, or to subscribe such declaration, or shall make or subscribe a false declaration, he shall forfeit 100*l*. 53 G.3. c.88.

§ 2. Every seller of and dealer in coffee, tea, cocoa nuts, or chocolate shall, on demand of the officer of excise under whose survey he shall then be, enter into the said books the quantities of the said commodities which he is by the act 10 *G*.1. *c*.10. § 35. required to enter therein, and shall immediately afterwards, if demanded by such officer, return such book to him; and the truth of the entries shall then be verified upon declaration as aforesaid, under the penalty of 100*l*. for every neglect or refusal. Dealer to make entries in books on being required by excise officer. Penalty.

But by stat. 12 *G*.1. *c*.28. § 29. No dealer in cocoa nuts shall dispose of less than 28lbs. at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer, and permit him to take account of such name, &c.; on pain of 20*l*. for each pound of cocoa-nuts otherwise disposed of, and of 20*l*. for default about the entry. 12 G.1. c.28.

By stat. 12 *G*.3. *c*.46. § 4. Such dealers in and sellers of tea shall in their accounts and books to be kept as aforesaid, distinguish particularly the respective quantities of each of the said sorts of black tea and green tea by them consumed, retailed, or sold on each day, on the like pain of 100*l*. as aforesaid. 12 G.3. c.46.

By stat. 10 *G*.1. *c*. 10. § 39. If any such dealer in coffee, tea, or cocoa-nuts, or maker or seller of chocolate, shall conceal the same from the view of the officer with intent to defraud H. M., he shall forfeit the same, and treble the value thereof, and also all canisters and package containing the same. 10 G.1. c.10. Dealers concealing coffee, &c.

§ 40. If any person shall assault or hinder any officer of the customs or inland duties in seizing or securing any coffee, tea, cocoa-nuts, or chocolate; or shall by force rescue the same after seizure, or attempt so to do; or shall break or damage any vessel or package containing the same, he shall forfeit 50*l*. Obstructing officers, or rescuing coffee, &c.

And by stat. 35 *G*.3. *c*.118. § 22. If any person shall obstruct any officer in the execution of his duty, or shall rescue any coffee or cocoa-nuts which have been seized, or attempt so to do, where no penalty is particularly provided, he shall forfeit 100*l*. 35 G.3. c.118.

59 G.3. c.53. Penalty for obstructing officers, in cases not otherwise provided for.

And by stat. 59 *G*.3. *c*.53. § 26. If any person shall molest, disturb, hinder, oppose, or impede any officer of excise in the due execution of the powers and authorities by this act granted, except in cases for which other penalties are provided, every person so offending shall forfeit the sum of 200*l*.

Power of the justices.

All the said penalties and forfeitures (except where herein otherwise directed) shall be recovered and mitigated as by the laws of excise (*a*) or in the courts at *Westminster;* and be employed half to the use of the king, and half to the informer. 10 *G*.1. *c*.10. § 41. — 11 *G*.1. *c*.30. § 39. — 4 *G*.2. *c*.14. § 10. — 18 *G*.2. *c*.26. § 14. — 24 *G*.2. *c*.40. § 33. — 43 *G*.3. *c*.68. § 45. — [*c*.69. § 4. *Customs.*] — 53 *G*.3. *c*.88. § 3. — 58 *G*.3. *c*.76. § 4. — 59 *G*.3. *c*.53. § 27. — 3 *G*.4. *c*.53. § 8.

12 G.1. c.28.

And by stat. 12 *G*.1. *c*.28. § 33. The penalties on the said act shall be recovered as by the laws of the customs or excise respectively.

Proof to lie on the claimer.

And by stat. 10 *G*.1. *c*.10. § 28. On disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer.

Condemnation and sale.

By stat. 12 *G*.1. *c*.28. § 1. The commissioners shall cause all tea and coffee seized in *London* and condemned, to be sold there; and if seized elsewhere, they shall cause it after condemnation to be brought and sold in *London*. § 16. Or, after having been first valued by sworn valuers, they may be sold where the commissioners shall think proper.

§ 3. But if they think fit, they may cause such tea as cannot be sold at a public sale for 5*s*. a pound to be burnt or otherwise destroyed; and the person making seizure to be rewarded as they shall think proper, not exceeding 1*s*. 6*d*. for each pound of such tea.

18 G.2. c.26. Utensils liable.

By stat. 18 *G*.2. *c*.26. § 8. All stock and utensils found in the shops or other places aforesaid shall be liable to the duties and forfeitures.

§ IV. (6) Cyder, Perry, Mum, Metheglin, and Mead.

Duties.

Duties. — See stats. 43 *G*.3. c.69. — 45 *G*.3. c.30.

Licence.

Licence to sell Cyder and Perry. — See stats. 48 *G*.3. c.143. § 2. 5. — 3 *G*.4. *c*.77. — 5 *G*.4. *c*.54. tit. "Alehouses." Vol. 1.

Transfer of licence.

Transfer of Licence. — See stat. 53 *G*.3. *c*.103. Vol 1. p.54.

Licence for making mead.

By stat. 43 *G*.3. *c*.69. sch. A. Every maker of *metheglin* or *mead* for sale shall take out a licence, for which he shall pay 1*l*., and by stat. 55 *G*.3. *c*.30. (*b*) 1*l*. additional, and shall renew the same annually, under a penalty of 10*l*.

Persons in partnership.

By stat. 24 *G*.3. *sess*. 2. *c*.41. §. 8. Persons in partnership need only take out one licence for one house.

3 G.3. c.1. Dealers in cyder to make entry of their storehouses.

By stat. 3 *G*.3. *c*.1. § 25. Every dealer in and retailer of *cyder* and *perry*, and other person receiving into his custody either of them for sale, and every person who shall buy any fruit to make into cyder or perry for sale, shall make entry of his storehouses, cellars,

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(*a*) For which see *ante*, 46 *G*.3. *c*.112.

(*b*) The duties by stat. 43 *G*.3. *c*.69. are granted without limitation of time; those by stat. 55 *G*.3. *c*.30. are by stat. 3 *G*.4. *c*.27. to continue until 5th *July*, 1826.

and other places, at the excise-office within the district; on pain of 50*l*. 3 G.3. c.1.

And by stat. 6 *G*.3. *c*.14. § 9. Every factor or agent taking any cyder or perry into his possession, shall, three days before he shall begin to dispose of the same, make entry in writing at the next office of excise of his name and the place where the cyder or perry is to be kept: and if he shall make use of any warehouse or other place, without having made such entry, he shall forfeit 50*l*. for every such place. And every such factor or agent shall be liable to all the regulations which any dealer in or retailer of cyder or perry is liable to by this or any other act now in force, for managing the duties on cyder and perry. 6 G.3. c.14. Persons taking cyder or perry into their possession.

§ 5. Every person who shall receive into his custody or possession any cyder or perry, to be by him sold or disposed of, shall be deemed to be a factor or agent, and chargeable as such with the duty; unless he shall make due proof (*a*) that such cyder or perry was made from fruit of his own growth, and not from bought fruit; or unless it shall appear by a certificate under the hand of the proper officer of excise, accompanying the said cyder or perry, that the duties imposed by this and all former acts had been charged on the same. Who deemed factors, and chargeable. Exception.

§ 11. Every person who shall buy any cyder or perry, or any fruit to make into cyder or perry, and shall sell any cyder or perry so bought or made, by the hogshead or any greater or lesser measure; or in less quantities than 20 gallons at a time, whether the same be made from fruit of his own growth, or from bought fruit; shall be deemed a dealer in and retailer of cyder or perry. Dealers and retailers of cyder and perry.

§ 13. Every such dealer in and retailer of cyder or perry made from fruit of his own growth shall be liable to all the regulations which any dealer in or retailer of cyder or perry is liable to by this or any other act now in force for managing the duties on cyder or perry.

§ 15. And to prevent frauds being committed by dealers and retailers or factors and agents in ordering quantities to be removed immediately from the maker to the persons to whom they are consigned by such dealers and retailers, factors and agents, without coming into the possession of such dealers, retailers, factors, or Cyder not to be removed till the duties are charged.

(*a*) Affidavit that Cyder sent by a Ship is from Fruit of the Maker's own Growth. 6 *G*.3. c.14. § 5.

[From *Y.C.P.* 120.]

County of ——— } T. A, *of* ——— *in the said county,* ——— *maketh oath before me, one of his majesty's justices of the peace in and for the said county of* ———, *that ten hogsheads of Cyder, marked* C.P. *shipped by* C. P. *of* ———, *in the county aforesaid, yeoman, on the* —— *of* ——— *instant, at* ———, (*within the limits of the port of* ———,) *in the said county, on board the ship* ———, *of* ———, *the master of which ship is* R. C. *and bound from* ——— *aforesaid to* ———, *is Cyder, made from apples of the growth of him the said* C. P. *and that no bought fruit was mixed therewith. The said Cyder is consigned to* I. L. *esquire,* ———.

Sworn before me, at ———, *in the said county of* ———, *this* —— *day of* ——— 18—.
J. P. }   T. A.

6 G.3. c.14. agents, whereby the duties are prevented from being charged, it is enacted, that if any such dealer, &c. shall cause such cyder or perry so to be removed from the maker to the person contracting for, or ordering the same, without the duties having been first charged, and without a certificate from the officer of excise (which he shall give without fee) signifying the quantity and number of casks or other package, and that the duties have been charged, he shall forfeit 50*l*.

Drawbacks allowed. § 16. The said duties shall be drawn back on distillation into low wines and spirits; and if such cyder or perry, having paid the duties, shall afterwards, by being unfit for sale as cyder or perry, be charged with the duties on vinegar, three commissioners of excise, or two justices, on proof thereof, shall discharge the duties thereon imposed by this act.

7 & 8 W.3. c.30. Concealing cyder, metheglin, or mead. By stat. 7&8 *W*.3. *c*.30. § 16. If any maker of cyder, metheglin, or mead, for sale, shall conceal or convey away any cyder, metheglin or mead, from the view of the gauger, he shall forfeit for every hogshead of cyder 40*s*., and so in proportion; for every gallon of metheglin or mead 5*s*.

Penalty for refusing to have place searched. § 17. If any maker or retailer of the liquors aforesaid shall on request or demand made by the gauger in the day time, or if by night in the presence of a constable, refuse to permit him to enter his house, storehouse, or other place used by him, and to take account of the said liquors, he shall forfeit 15*l*.

6 G.3. c.14. Penalty for obstructing. By stat. 6 *G*.3. *c*.14. § 17. If any person shall obstruct the excise officer in execution of the powers of that act, in relation to the duties on cyder and perry, he shall forfeit 40*l*.

8 & 9 W. c.19. Delivering materials to distillers. By stat. 8&9 *W*.3. *c*.19. § 9. If any common brewer or maker of cyder, making beer, ale, or cyder for sale, shall deliver to any distiller or vinegar maker any wash, tilts, ale, beer, vinegar-beer, or cyder, without first giving notice to the gauger what quantity he intends to deliver, and when and to whom; he shall forfeit for every barrel 20*s*.

6 G.3. c.14. Carrying coastwise cyder or perry. By stat. 6 *G*.3. *c*.14. § 8. The master of any vessel, in which shall be shipped any cyder or perry to be carried coastwise, shall, within three days after his arrival at any port where any part thereof is to be delivered, give to the proper officer of excise there an account in writing of the whole quantity by him received on board, distinguishing therein the names and places of abode of the persons by whom the same was put on board, and at what place, and the names and places of abode of the persons to whom the same was directed or consigned, and where to be delivered; which, if he shall not do, or shall deliver any part thereof at sea, or in any other place than where it was consigned, (unavoidable accidents excepted,) he shall forfeit 20*l*.; and he shall, within twenty-one days after his arrival at the place of delivery, land all the cyder and perry then on board to be delivered there, on pain of forfeiting all such as shall not be so landed, and the same may be seized by any officer of excise, together with the casks or other package.

12 C.2. c.24. Entry and payment of duties. By stat. 12 *C*.2. *c*.24. § 29, 30. Every maker or retailer of cyder, perry, or metheglin, shall, once in every month, make a true and particular entry, at the office of excise within the limits of which the commodities are made, of all the cyder and perry made or retailed in that month, on pain of forfeiting for each omission, 20*s*.

§ 31. Every such maker or retailer shall pay the duty within a month after he shall or ought to have made such entry, on pain of forfeiting double. 12 C.2. c.24.

§ 32. No person shall be obliged to travel for making such entries or payments, if he live in a market-town, out of it, or if he live out of one, to no other place than the next market-town in the same county, on the market-day.

12 *C.2. c.23.* §.20. & *c.24.* § 34. Cyder and perry shall be charged according to the wine-gallon. By what measure charged.

Recovery of penalties, &c. vide *ante*, p. 94. as in *Ale, &c.* Penalties.

By stat. 12 & 13 *W.&I I. c.*11. § 17. No information shall be prosecuted against cyder-makers, for mis-entries, or other offences, unless entered within three months after the offence shall be committed, and notice thereof given them, or left at their dwelling-houses, within a week after entering the information. Prosecutions to be commenced within three months.

§ IV. (7.) Glass.

[19 G.2. c.12.—10 G.3. c.44.—17 G.3. c.39.—24 G.3. sess. 2. c.41.—27 G.3. c.28.—28 G.3. c.37.—32 G.3. c.40.—35 G.3. c.114.—38 G.3. c.33.—39 & 40 G.3. c.45.—43 G.3. c.69.—47 G.3. sess.2. c.30.—49 G.3. c.63.—51 G.3. c.69.—52 G.3. c.54.—c.94.—53 G.3. c.103.—54 G.3. c.97.—55 G.3. c.30.—56 G.3. c.108.—58 G.3. c.33.—59 G.3. c.97.—c.104. c.115.—1&2 G.4. c.13. 5 G.4. c.40.]

By stat. 19 *G.2. c.*12. § 19. No glass shall be imported into *Ireland* other than the manufacture of *G. B.*; on pain of forfeiting the same, and the ship, and 10*s.* a pound. 19 G.2. c.12. Importation.

And by stat. 17 *G.3. c.*39. § 25. If any foreign glass shall be landed or unshipped with intent to be put on shore, before entry and payment of the duties, or without a warrant from the proper officer; the same shall be forfeited or the value thereof, and may be seized or recovered of the importer or proprietor by any officer of the customs or excise; and moreover the master or other person having command of the vessel, and every other person concerned in such landing or unshipping, shall forfeit 100*l.* 17 G.3. c.39.

By stat. 38 *G.3. c.*33. § 6. to prevent the fraudulent importation of glass, every package containing any plate or plates of glass unframed, being plate, crown, or sheet glass, which shall be imported, or which shall be brought into this kingdom for the purpose of exportation, shall be marked on the outside thereof in Roman letters four inches long at least with the word GLASS; on pain of forfeiture thereof, together with the package, and all goods or merchandize contained therein. 38 G.3. c.33.

§ 7. And the master of every vessel in which any such glass shall be imported, shall, in the report of his ship's cargo, express every such package of glass; on pain of forfeiting the same, and also 100*l.*

§ 8. No such glass shall be imported in any package, which shall not contain 5 cwt. net, at least, on forfeiture thereof: Provided that this act shall not extend to forfeit any plate of glass 60 inches in length or upwards, on account of the package not being marked as aforesaid.

By stats. 43 *G.3. c.*69. & 59 *G.3. c.*52. Several duties of excise and customs are imposed upon the several kinds of glass. Duties.

49 G.3. c.63. And by stat. 49 *G*.3. *c*.63. § 1, 2, 3. The former duties upon crown glass and broad glass were repealed, and new duties are imposed by that statute, and also by 52 *G*.3. *c*.94. (*a*)

24 G.3. c.41. Glass-makers to be licensed. And by stat. 24 *G*.3. *sess*. 2. *c*.41. § 1. 7. Every *glass-maker* shall take out a licence, for which he shall pay 10*l*. (and 10*l*. additional by 55 *G*.3. *c*.30.) (*b*) and shall renew the same annually, ten days at least before the end of the year, on the penalty of 50*l*. See 43 *G*.3. *c*.69. Sched. A.

By stat. 24 *G*.3. *sess*. 2. *c*.41. § 8. Such licence does not empower the glass-maker to work in any other house than that for which the licence was taken out.

But one licence is sufficient for partners carrying on business in one house. *Id.*

53 G.3. c.103. By stat. 53 *G*.3. *c*.103. Upon the death of any person licensed, or upon the removal of any person from the house or premises in which his licence shall authorise him to make or manufacture, deal in, vend, or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorize the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted.

17 G.3. c.39. 35 G.3. c.114. Place of making to be entered. And by stat. 17 *G* 3. *c*.39. § 27.—35 *G*.3. *c*.114. § 1. (made perpetual by 39 & 40 *G*.3. c.45.) Every maker of glass shall after 5th *July* 1795, before he begins to make any glass or mix or prepare any materials, make entry in writing at the next excise office of all workhouses, furnaces, pots, pot chambers, annealing arches, warehouses, rooms, and other places by him intended to be used for the making or keeping of glass, or pots, or materials mixed and prepared for making of glass; on pain of forfeiting 200*l*. for every workhouse, &c.

58 G.3. c.21. 59 G.3. c.115. By stat. 58 *G*.3. *c*.21. § 3. and 59 *G*.3. *c*.115. § 8. No person shall make, or keep, or erect, set up, enter or use any house or place for making or keeping a certain glass called smalts, within one mile in a direct line from any place entered or used for making or keeping other glass; nor shall any person make, or keep, or erect, set up, enter, or use any house or place for making or keeping other glass, within one mile in a direct line from any place entered or used for making or keeping smalts; nor shall any maker of smalts make any other kind of glass, on pain of forfeiting 500*l*.; and all entries made contrary to this act shall be void.

45 G.3. c.30. Who shall be deemed makers of glass. By stat. 45 *G*.3. *c*.30. § 10. Every person who shall make or manufacture any sort or kind of glass, or glass wares, by melting any metal, materials, cullet, or old or broken glass, in any pot, crucible, or other utensil, shall be deemed a maker of glass, and subject to the provisions, rules, regulations, and penalties, to which makers of glass are now liable.

54 G.3. c.97. By stat. 54 *G*.3. *c*.97. § 7. Every person who shall make or manufacture any kind or sort of glass ware, by melting or softening of glass, or who shall melt or soften glass in any manner whatsoever,

(*a*) For the duties and drawbacks on plate glass, see stat. 59 G.3. *c*.115.

(*b*) The duties by 55 G.3. *c*.30. were limited to 5th April 1819, but are continued until 5th July 1826 by stat. 3 G 4. c.27.

for making the same into any vessel, ware, or piece of household furniture, or part of any vessel, &c. shall be deemed a maker of glass, and subject to the provisions, rules, regulations, and penalties to which makers of glass are now liable. 54 G.3. c.97.

By stat. 58 *G.*3. *c.*33. § 2. No person who shall carry on the business of a drop pincher only, and not make any other kind of glass or glass wares, and shall use in such trade, lump, paste, or cane glass only, and duly make entry with the proper officer of excise of all workshops, rooms, and places where he shall carry on such trade, or keep materials for that purpose, and shall produce to the surveying officer all materials by him used, and deliver to such officer invoices for all lump, paste, or cane glass received into his custody, signed by the maker and seller of such glass, or his foreman or clerk, and the officer surveying the glass house where such glass was made, and shall not use any cullet or waste glass, and shall observe the regulations imposed in respect of such trade, except taking out a licence as a glass maker, shall be liable to any penalty for carrying on such business without a licence: Provided that all cullet or waste glass and other materials which may be used in making glass or glass wares, found in the possession of any person carrying on such trade, except lump, paste, or cane glass for which such invoice shall be produced, shall be forfeited, and may be seized by any officer of excise; and the person in whose possession the same are found, shall, above all other penalties, forfeit 50*l.* 58 G.3. c.33. Drop pinchers.

By stat. 35 *G.*3. *c.*14. § 2. The officers of excise by day or night, upon request, may enter into every workhouse, warehouse, or other place, entered or made use of by any maker for the making, preparing, or keeping materials for the making of glass, or for the making or keeping of glass, or of pots for the making of glass, and examine and take an account of the metal and materials there mixed and prepared for the making of glass, either before or after the same is put into the pots, and of all glass there made or making; and also may take an account of the capacity or content of each pot, and shall mark and number every such pot as he shall think fit; and if any person shall counterfeit or alter any such mark, or connive at the same being done, he shall forfeit 500*l.* And if any person shall wilfully deface or obliterate any such mark, or cause or connive at the same being done, he shall forfeit 200*l.* 35 G.3. c.14. Officers may enter and survey and mark pots.

By stat. 10 *G.*2. *c.*12. § 9. the officer shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making glass; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand for the glass-maker; and if he shall not leave such copy on demand, he shall forfeit 40*s.* 10 G.2. c.12.

§ 3. Every maker shall, four hours before he begins to light any fire to heat his annealing arch, give to the officer under whose survey he is, notice in writing of his intention so to do, specifying therein every pot set in such annealing arch, with the number marked by the officer on such pot; on pain of forfeiting 20*l.* Notice of beginning to work.

By stats. 19 *G.*2. *c.*12. § 7, 8. 17 *G.*3. *c.*39. § 38. Every maker shall, before he begins to fill any pot, give 12 hours notice in writing to the officer of the time and hour when he intends to begin, 19 G.2. c.12. 17 G.3. c.39.

19 G.2. c.12.
17 G.3. c.59.

with an account of the weight of the materials, and the species of glass to be made in each pot; on pain of 50*l*. And if the filling be not begun pursuant to such notice, the said notice shall be void.

If, after notice given, and a gauge taken by the officer, he shall put into any pot any material or preparation, he shall forfeit 50*l*.

35 G.3. c.114.
No pot to be filled till gauged.

By stat. 35 *G.*3. *c.*114. § 4. No maker shall, after any pot has been set in the furnace, begin to fill the same with metal or preparations for the making of glass, until the officer shall have previously examined and gauged such pot, after the same has been set up in the furnace as aforesaid; on pain of forfeiting 50*l*.

Fire not to be stirred, &c. to obstruct the officer.

§ 5. And that the officer may be enabled without inconvenience to ascertain whether, after notice given, and a gauge taken, and without fresh notice in writing, any metal, material, or preparation has been put into any pot, no maker shall, during a quarter of an hour after the officer shall have entered the glass house, and shall have forbidden the same, stir or break up the fire, or add fresh coals or fuel thereto, in any furnace or annealing arch; or wilfully raise any smoke, or other noisome or offensive vapour, whereby the officer may be hindered or obstructed in gauging or examining any pot, or in examining the metal or materials in such pot, or in gauging or ascertaining the quantity, or in examining or counting the vessels, utensils, or wares in any annealing arch; on the penalty of 100*l*.

Officers may unstop pots to gauge materials.

§ 6. And the officer may at all times unstop or take down any stopper from any pot, for the purpose of examining, gauging, or taking an account of the materials in such pot.

47 G.3. sess.2. c.30.

By stat. 47 *G.*3. *sess.* 2. *c.*30. § 16. reciting the 19 *G.*2. *c.*12. and the method prescribed therein of taking an account of metal and materials for making glass after being put into the pots, and reciting that since that act it had been the invariable practice of the officers of excise to take such account of the quantity after the same had been put into such pots according to the following method; viz. to gauge and ascertain the dimensions of every such pot, before the same had been set in the furnace, and therefrom to calculate the quantity which every such pot was capable of containing at every inch, ½ inch, ¼ inch, and fractions of an inch, and to ascertain the weight or quantity of the metal or materials at any time contained in such pot, for the making of crown or any other species of glass, by gauging or measuring the dry inches, or unfilled and unoccupied space or distance between the top, rim, edge, or lip of such pot in the furnace, and the surface of the fluid, metal, or materials in such pot, and deducting the quantity of metal or materials which this space denoted by such dry inches, or the unfilled and unoccupied part of such pot appeared, by such original gauge or calculation, capable of containing from the quantity of metal or materials which, according to such original gauge or calculation, the whole pot was denoted to be capable of containing; and reciting that doubts had arisen whether this method were warranted by law, enacted, that in such case the quantity should be deemed to be as by the recited method it is denoted to be, and the officer of excise shall make a report thereof in writing to the respective commissioners of excise, or those appointed by them to receive the same, and such report to be a charge upon such maker.

By stat. 51 *G*.3. *c*.69. § 5. every maker of glass, before he shall begin to anneal any glass or glass wares whatsoever, shall make particular entry in writing of every lear by him intended to be used for the annealing of glass, at the office of excise within the compass or limits whereof such lear shall be, on pain of 200*l*. for every such lear which he shall so use without having made such entry.

51 G.3. c.69. Glass makers to make entry of the lears to be used by them.

By stat. 35 *G*.3. *c*.114. § 7. If any maker of *common glass bottles* shall be desirous of making common bottles or other vessels or utensils of *common bottle metal only* in any distinct and separate glass house and building, and shall deliver to the surveyor or supervisor of the division where such glass house is situate a declaration in writing of his being desirous to be charged with and pay the said duty according to the weight of the bottles (*a*), and shall specify the particular glass house and building in which he is desirous of making the same; in such case, the officer shall not charge the duty from any gauge taken by him in any pot or materials or preparations used by such maker. Provided always, that such declaration shall be in force for six months at least from the time of the delivery thereof, and from thenceforth until the same be revoked or withdrawn by a notice in writing, delivered by such maker to the surveyor or supervisor of the district.

35 G.3. c.114. Makers of common glass bottles, &c. in distinct houses, to give a declaration thereof.

Declarations to remain in force for six months at least.

§ 8. Every such maker, having delivered such declaration, shall build and construct every annealing arch or oven intended to be used for the annealing of common glass bottles in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance, and shall number the same progressively with a durable mark; on pain of forfeiting 100*l*.

Annealing arches to be made of a certain form, and to be numbered.

§ 9. Every such maker shall, at his own expence, provide and affix a sufficient iron grating to the mouth of his annealing arch and oven, to be approved of in writing under the hand of the surveyor or supervisor; and proper locks and keys and all other necessary fastenings, for securing and sealing such annealing arch and oven, and the mouth and iron grating thereof, shall be provided by the surveyor and supervisor, at the expence of such maker; and every annealing arch or oven, and the mouth and iron grating thereof, shall be securely locked, fastened, and sealed by the officer at all times except when such maker shall be at work, in putting in bottles, or shall be opened by the proper officer in pursuance of such previous notice as is hereinafter directed for the purpose of lighting a fire for the annealing or for the drawing out the bottles, or repairing the arch: And if any such maker shall neglect or refuse at his own expence to provide such iron grating, or to affix the same in manner aforesaid; or to pay for any lock, key, or other necessary fastening provided by such surveyor or supervisor; or if any person shall obstruct or hinder any officer or person by him employed in fixing such fastening, or in the locking, sealing, or securing any such annealing arch or oven, or the mouth or iron grating thereof, or fastening as aforesaid; or by any means or contrivance whatsoever shall open any such lock, or annealing

Iron gratings to be fixed.

Locks, &c. to be provided by the officer, at the expence of the maker.

Annealing arches to be locked except a certain times.

Penalty on obstructing officers, or openin such locks.

(*a*) Under the word *bottles* is to be understood also all other *vessels* or *utensils* made of *common bottle metal*, unless otherwise expressed.

35 G.3. c.114.

arch or oven, or the mouth or iron grating thereof, before the same shall have been unlocked and opened by the officer; or shall wilfully break or damage any such lock, seal, or fastening; he shall for every such offence forfeit 200*l*. Provided always, that no such annealing arch or oven shall remain unlocked or open for any purpose or for any pretence whatever (except for repairing when empty), for more than 24 hours from the time when opened by the officer, who may, at the end of such 24 hours, lock, fasten, and seal such annealing arch and oven, and the mouth and iron grating thereof.

Annealing arch not to remain open more than 24 hours, except for repairs.

§ 10. And where locks, keys, or fastenings shall be provided in pursuance of this act, every such maker to whom the same shall belong shall, when required by the surveyor or supervisor, immediately alter, repair, and amend the same according to such requisition; on pain of forfeiting 100*l*.

Locks, &c. to be altered and repaired, when required by the officer.

§ 11. And when any such maker having delivered such declaration shall be desirous to light any fire to heat his annealing arch or oven, he shall give to the officer 12 hours notice in writing, and such officer shall attend at the time, and unlock and open such annealing arch or oven, and the mouth and iron grating thereof; and if such maker shall neglect or refuse to light such fire within one hour, such notice shall be void, and such officer shall again lock up, fasten, and seal the same, and such maker shall give a like and fresh notice before the same shall be again opened.

Makers to give 12 hours notice of their intention to heat annealing arches.

Officers to attend and unlock them.

Fire to be lighted within an hour.

§ 12. Every such maker having delivered, &c. shall, when any such common glass bottles are blown or made, remove the same directly into such annealing arch or oven, and shall there deposit the same in such manner as such officer shall approve, and so that the same may the most easily and securely be viewed and examined, and the number and kinds thereof ascertained in each annealing arch or oven; and no such maker shall at one time put or keep in any such annealing arch or oven any common bottles of different makings, or fillings of the pots; nor put or keep any other sort or species of glass or glass wares whatever, or any phials in any such annealing arch or oven entered or made use of for the annealing of common bottles; on pain of forfeiting 50*l*.

Bottles when blown to be removed into the annealing arch.

Bottles of different makings not to be put therein at the same time, nor any other sort of glass.

§ 13. And every such maker, having delivered, &c., and having begun to work any common bottle metal from out of any pot, shall, without any unnecessary delay or interruption, continue to work out all the pots then charged, and shall finish the working out thereof within 16 hours after he began, and as soon as such metal shall be so worked out as aforesaid, and the bottles put into the annealing arch or oven, such maker shall, in the presence of the officer, again charge every such pot with fresh materials or preparations (other than cullet or broken glass), not less than 50lb. weight; and shall also deliver to such officer a declaration in writing, specifying the true number of bottles, and whether the same are reputed quart or pint bottles, or bottles of any other and what reputed measure, and the number and kinds of any other vessels or utensils of common bottle metal contained in every such annealing arch; on pain of forfeiting 100*l*. Provided that no such maker shall be liable to the said penalty by reason of his not delivering a true declaration as aforesaid, if the same shall not

The whole metal intended to be manufactured, to be worked within 16 hours.

And the pots to be again charged.

A declaration of the number of bottles to be delivered.

Penalty.

Exception.

differ from the number of bottles, vessels, or utensils, in any such annealing arch, in a greater proportion than 5 in 100. 35 G.3. c.114.

§ 14. Every maker who shall have begun to work any common bottle metal out of any pot shall be deemed to have begun to work out the common bottle metal out of every pot at that time charged with materials for making common bottles within the same glass house or building. Beginning to work, deemed beginning to work the whole then charged.

§ 15. And every such maker shall keep sufficient scales and weights at the place where he shall manufacture such bottles, and shall, at his own expense, affix a proper hook or staple in a proper place, to be approved of under the hands of the surveyors or supervisors of the division, and shall suffer any officer to use the same; on pain of forfeiting 50*l.* If any such maker shall, in weighing any such common glass bottles, make use of any false, unjust, or insufficient scales or weights, or shall practise any art or contrivance by which such officer may be hindered from taking a true weight; he shall forfeit 100*l.*, and also such scales and weights, which may be seized by any officer. Scales and weights. Using false weights, or deceiving the officer.

§ 16. Every such maker, having delivered, &c. and being desirous to take any glass bottles out of any annealing arch or oven, shall, twelve hours before he shall begin, give to the officer notice in writing of his intention, specifying each particular arch or oven, and the number thereof, out of which it is intended to take such bottles, and the hour at which he intends to begin; and such officer shall attend at the time mentioned in such notice, and shall unlock and open such annealing arch and oven, and attend to see such bottles taken out; and such maker shall immediately, on such officer's attendance, begin and continue without any unnecessary delay to take out the whole of the bottles within four hours from the time of beginning; and such maker shall immediately proceed to weigh the same in the presence of such officer, and shall be charged with and pay the duty according to such weight; on pain of forfeiting in such case 100*l.* And if any such maker, having given such notice, shall not immediately begin when such annealing arch or oven is so opened, such notice shall be void, and such officer shall immediately again lock up and seal the same in manner aforesaid, and such maker shall be obliged to give a fresh notice. Provided, that no such maker shall be at liberty to give any such notice except in the day-time, and between eight in the morning and six in the afternoon, and every other notice shall be void. Twelve hours notice to be given of taking bottles out of the annealing arch. Officers to attend. The whole to be taken out within four hours, and to be weighed. If such makers do not immediately begin, fresh notice to be given. Within what hours such notice shall be given.

§ 17. Provided also, that in weighing common glass bottles the turn of the scale shall be in favour of the crown, and in lieu thereof there shall be allowed to such maker 1 lb. upon every 100 lbs. Allowance for the turn of the scale.

§ 18. Every such maker shall assist, to the utmost of his power, with a sufficient number of his servants, such officer in weighing and taking an account; on pain of forfeiting 50*l.* Makers to assist.

§ 19. The allowance made by 17 *G.3. c.*39. of $\frac{1}{7}$ part of the metal or other materials contained in pots for making common bottles is repealed. Allowance by 17 G.3. repealed.

§ 20. If any such maker, having delivered, &c. shall convey away any common glass bottles from any annealing arch or oven Bottles not to be removed till weighed.

35 G.3. c.114. before the same be weighed, or shall neglect or refuse to produce the same to such officer to be weighed; he shall forfeit 100*l.*

Bottles weighed and unweighed to be kept separate. § 21. Every such maker having delivered, &c., shall keep all common glass bottles which have not been weighed separate from those that have been weighed, and from all other glass wares whatsoever; on pain of forfeiting 50*l.*

Using private annealing arches or concealing bottles unweighed. § 22. If any such maker having delivered, &c. shall use any private or concealed annealing arch, oven, utensil, or place, other than those entered, or shall fraudulently remove or convey away any common glass bottles before the same have been weighed; or hide or conceal the same; he shall forfeit 500*l.*

No phials, &c. to be made in places entered for making common glass bottles. § 23. No such maker having delivered, &c. shall make within the same glass-house entered or used for making common bottles, or in any building thereto adjoining, any phials or other sort of glass or glass ware, except common bottles and other vessels and utensils of common bottle metal, which vessels and utensils shall be such only as were immediately before the passing of this act usually made of common bottle metal; on pain of forfeiting 200*l.*

Upon suspicion that bottles have been removed before weighed, officers by warrant may search suspected places. § 24. If any officer shall suspect that any common glass bottles have been fraudulently conveyed away before the same have been weighed, and are deposited, hid, or concealed in any place whatsoever, if within the limits of the chief office in *London*, upon oath made by such officer before two commissioners of excise, elsewhere before one justice, setting forth the ground of his suspicion, such commissioners or justice may by special warrant empower such officer by day or night (but if in the night in the presence of a constable) to enter such suspected place, and to seize and carry away all such common glass bottles, or other such vessels there found, as forfeited. Obstructing such officers. And if any person shall obstruct such officer, or any person acting in his aid, in the execution of such warrant, he shall forfeit 200*l.*

Obstructing officers in their duty. § 25. If any person shall obstruct any officer in the execution of any powers given to him by this or any other act relating to glass, he shall (except where other penalties are herein imposed) forfeit 200*l.*

Officers may gauge materials and take samples. § 26. Provided that nothing herein contained shall extend to make it unlawful for any officer at all times to inspect, examine, gauge, or otherwise take an account of the materials mixed and prepared for the making of glass in any glass-house, as well before the same shall be put into any pot as after, or to take samples, not exceeding four ounces in the whole, out of each pot or other vessel containing such preparation.

17 G.3. c.39. And by stat. 17 *G.3. c.*39. § 34. The gauger or other officer may take samples not exceeding four ounces in the whole out of each pot, paying for the same (if demanded) one halfpenny for each ounce: and if any person shall obstruct the officer in taking samples, he shall forfeit 50*l.*

19 G.2. c.12. Entry of glass made. By stat. 19 *G.2. c.*12. § 13. Every maker (within the bills) shall monthly, (and elsewhere once in six weeks), make entry in writing at the next excise office of the quantities of the materials used in each making, on pain of 20*l.*; which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor.

55 G.3. c.113. By stat. 55 *G.3. c.*113. § 5. In lieu of the oath or affirmation in

19 *G.*2. *c.*12. § 13. every maker of *flint* glass, or *enamel*, *stained*, or *paste glass*, or *phial* glass, or *spread window* glass, commonly called *broad* glass, or *window* glass, not being spread glass, and commonly called or known by the name of *crown* glass, or *German sheet* glass, or who, under the declaration and regulations of 35 *G.*3. *c.*114. shall make *common bottles*, or other vessels or utensils of common bottle metal, in *London*, or *within the limits of the bills of mortality*, shall monthly, and every maker of such glass in any other part of *G. B.* shall once in every six weeks, make a true entry in writing at the next office of excise, of the weight of all such glass made by him within such respective times, on pain of forfeiting 100*l.*; which entries shall be made upon the oath or affirmation of the makers of such glass, or of their clerk, workman, or servant employed in making the same; and shall be made *within the limits of the bills of mortality*, with such officers as shall be appointed by the commissioners of excise in *England*, who shall attend at the general office in *London* for that purpose, and in all other parts of *G. B.*, with the collectors or supervisors of the district within which the respective glass-houses are situated, without fee. 55 G.3. c.113.

By stat. 19 *G.*2. *c.*12. § 15. The maker, within the bills, shall in four weeks, and elsewhere in six weeks after entry pay off the duties, on pain of double duty (O). 19 G.2. c.12. Payment of the duty.

§ 11. If any pot filled with materials shall crack or break, whereby the whole or any part thereof shall become unfit for service, on proof thereof to the commissioners where such glass-house shall be situated, they shall make such allowance for the same as they shall judge reasonable. Pots breaking.

And by stat. 17 *G.*3. *c.*39. § 31. In recompence of waste necessarily happening in manufacturing the materials, and for metal left at the bottom of the pot which cannot conveniently be wrought out, in all pots containing more than one hundred weight, used for preparing materials for making of *flint*, *enamel*, *stained glass*, and of all *phial glass*, an allowance shall be made to the maker of one-fourth part of the materials contained therein, and of one inch deep at the bottom of the pot;—in small pots, commonly called *Pile ends*, not containing one hundred weight, an allowance shall be made of one-fifth only of the materials;—in pots used for the making of *crown* and *plate glass*, and of all *window glass*, whether flashed or spread, or otherwise manufactured, an allowance shall be made of one-fourth of the materials, and of four inches deep at the bottom. 17 G.3. c.39. Allowance for glass spoiled in making, and for waste.

§ 32. If the maker shall be desirous to work up any of the bottoms for which an allowance hath been made of three inches or of four inches at the bottom as aforesaid, he shall give six hours notice thereof in writing to the officer of excise; in which case he shall be charged with a duty for the same of 18*s.* 8*d.* per cwt., and shall have an allowance of one inch and no more at the bottom of the pot. And if he shall work any part thereof without having given such notice, he shall forfeit 50*l.* Glass makers may work up bottoms after having given notice to officer.

By stat. 32 *G.*3. *c.*40. § 1. After 5th *July* 1792 every maker of *flint* glass, who shall have given notice for beginning to fill any pot with metal or materials for making of flint glass in manner required by law, shall be allowed three hours next after the time 32 G.3. c.40. Regulations in the making of flint glass.

32 G.3. c.40. specified in such notice before he shall be required to begin to fill such pot, notwithstanding any thing in any former act to the contrary.

§ 2. Every *such* maker shall within six hours next after the time he shall begin to fill such pot put into the same one-fourth part at least of the true weight of the metal or preparation specified in such notice as being to be made use of in the making of flint glass; on the penalty of 50*l*.

§ 3. No *such* maker shall unstop or take down any stopper from his pot, containing any metal or preparation for the making of flint glass, unless one hour's previous notice in writing be given to the officer of excise of the time at which he intends to begin; on pain of forfeiting 50*l*.

§ 4. And if he shall not begin in pursuance of such notice, the same shall be void, and he shall be obliged to give a new notice in manner aforesaid, under the like penalty.

§ 5, 6. Provided that this shall not extend to unstopping or taking down any stopper from any such pot, which may happen to crack or break while filled with any metal or preparation, for the sole purpose of preventing the loss thereof, or from any other part for the sole purpose of discovering such broken pot; nor to subject any such maker to the said penalty of 50*l*. for unstopping or taking down any stopper from any pot during the time of the filling thereof, and within 36 hours from the time of his having begun to fill such pot.

§ 7. Every *such* maker (on his giving to the officer six hours previous notice in writing of his intention) may glaze any new pot previously gauged and taken an account of by the proper officer, and specified in such notice, and for that purpose may take out of any other pot any quantity of metal on which the duty has been charged, not exceeding 40lbs. in the whole, and put such metal immediately in the presence of such officer into such new pot, for the sole purpose of glazing the same, without such maker being liable to any further duty in respect of such metal, or incurring any penalty by reason thereof.

§ 8. And every *such* maker, on his giving six hours notice in writing in manner aforesaid, may cleanse any pot in which any stained glass hath been melted and specified in such notice, by taking any quantity of unstained metal on which the duty has been charged, not exceeding ten pounds in the whole, and by lading and unlading the same in the presence of such officer into and from such pot for that purpose, and by repeating such operations in the presence of such officer, until such pot shall be sufficiently cleansed, without incurring any penalty.

51 G.3. c.69. Glass makers to take out a licence for each lear.

By stat. 51 *G*.3. *c*.69. § 6. And every maker of flint glass or of phial glass, before he shall use any lear for the annealing thereof, shall, besides the licence for his glass-house, take out such licence hereinafter mentioned, as the case may require, authorising him to use such lear for the annealing of flint and phial glass, or either. If any such licence shall be granted to authorise the person to whom the same shall be granted to use any such lear for the annealing of flint and phial glass, or either, within the limits of the chief office of excise in *London*, it shall be under the hands and seals of two of the commissioners of excise in *England* for the

time being, or of such persons as they shall appoint for that purpose; but if out of the limits of the said chief office, the same shall be granted under the hands and seals of the collectors and supervisors of excise within their respective collections and districts, if such licence shall be granted, the same first paying 25*l.* for each such licence which shall be granted previous to *October* 10th, 1811, to authorise the person to whom the same shall be granted to use any lear for the annealing of flint and phial glass, or either, until the said *October* 10th; and 100*l.* for each such licence which shall be granted to authorise the person to whom the same shall be granted to use any lear for the annealing of flint and phial glass, or either, after the said 10th day of *October*: provided always, that it shall be lawful to include in any one licence any number of such lears belonging to the same person who shall take out any such licence, on such person paying for each such lear the sum of 25*l.*, or 100*l.*, as the case may require, for every such lear included in any such licence. (See 53 G.3. *c.*103. *ante*, p. 148.) 51 G.3. c.69.

§ 7. Nothing in this act shall extend to prevent any maker of flint or phial glass from using a lear, in respect of which no licence has been taken out, for the purpose of annealing flint glass of the sort which is made for cutting; provided such lear be immediately contiguous to a lear in respect of which a licence has been taken out, and the entrance of which shall be in the full view of any officer of excise, who shall at the same time observe and inspect the entrance of such contiguous lear, in respect of which a licence shall have been taken out, and the discharge hole of which shall be in the weighing room hereinafter mentioned, and not more than 12 feet from the discharge hole of such contiguous lear, in respect of which a licence shall have been taken out. A lear may be used though not licensed, if placed near a licensed one, and in view of the officer.

§ 8. No person shall use any lear for the annealing of flint and phial glass, or either, after the expiration of such licence, unless such person shall take out a fresh licence for the like purpose as hereinbefore directed, 10 days at the least before the expiration of such former licence, and so renew every such licence from year to year; and if any person shall presume to use any lear for the annealing of flint and phial glass, or either, without first taking out a licence, and renewing the same as hereinbefore directed, he shall for each such lear used without such licence, forfeit 500*l.* Licences to be renewed yearly. Penalty 500*l.*

§ 10. Every licence to be granted under this act, shall remain until and upon the 10th day of *October* next ensuing the granting thereof. Licences how long to remain in force.

§ 11. Every officer of excise, from time to time and at all times, shall mark and number every workhouse, pot-chamber, pot-hole, lear, warehouse, room, and other place whatsoever, entered or used by any maker of flint or of phial glass, for the making or keeping of flint or phial glass, or for the preparing or keeping any material or preparation for the making of flint or phial glass; and if any person whatsoever shall hinder any such officer in so marking or numbering, or shall wilfully alter, deface, or obliterate any such mark, or cause or procure any such mark to be defaced or obliterated, or shall connive thereat, the person so offending shall, for each offence, forfeit 100*l.* Officers to number pot-holes, &c. for making glass, or keeping material for making. Penalty.

§ 12. Every maker of flint or of phial glass shall erect, build, Flint and phial

51 G. 3. c. 69.

glass makers to construct their lears in a particular form.

Penalty 100*l*.

make, and construct every lear by him intended to be used for the annealing of flint or of phial glass, in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance into the same respectively, and only one discharge hole out of the same, and which said discharge hole shall open into and communicate with the weighing room hereinafter mentioned, and no other room or place whatsoever; and every such maker shall number all such lears progressively with a durable mark, and shall continue the same so numbered so long as the same shall be so used as aforesaid; and if any such maker shall erect or construct any lear contrary to this act, or shall neglect or refuse to so number the same, or so to keep or continue the same, or shall use any lear not so constructed, every such maker shall, for each such offence, forfeit 100*l*.

Flint or phial glass makers to affix iron grating to the entrance of the lear, and the lear to be locked by the officer, except when wares are depositing therein.

§ 13. Every such maker shall, at his own expence, find, provide, and affix a sufficient and secure iron grating to the mouth or entrance of every lear by him intended to be used for the annealing of flint or phial glass; and each such lear, and the mouth or entrance and iron grating thereof, shall be securely locked, fastened, and sealed by the officer of excise, at all times except when such maker shall be actually at work in placing or depositing therein articles, vessels, or utensils of flint glass or of phial glass for the annealing the same therein, or when such lear shall be opened by the proper officer in pursuance of such previous notice as is hereinafter directed for opening the same, for the purpose of lighting fire in or heating the same for annealing articles of flint or phial glass, or for the purpose of taking any such articles from such lear, or for the necessarily repairing the same; and if he shall neglect so to find any such iron grating, or to affix the same, he shall, for each such offence, forfeit 100*l*.

Penalty 100*l*.

Flint or phial glass maker to anneal all his flint or phial wares in such lear.

Penalty 200*l*.

§ 14. Every such maker shall place in one or more such lear or lears as aforesaid, for the annealing the same, and shall anneal therein all the flint and phial glass which shall be by him manufactured; and if any such maker shall omit so to anneal any portion of such glass by him manufactured, or shall place in any kiln, stove, or oven, or annealing arch or oven, other than such lear as aforesaid, any such glass for the annealing the same, or shall anneal the same therein, he shall, for each such offence, forfeit 200*l*.

No such maker to have in his lear any other glass with phial glass.

Penalty 100*l*.

§ 15. No such maker shall at one time put or keep in any lear entered or used for the annealing of flint or phial glass, any articles, vessels, or utensils of different makings, nor any sort of glass or glass wares, other than flint or phial glass wares, on pain of forfeiting for each such offence 100*l*.

Flint and phial glass makers to give notice of heating their lears.

§ 16. When any such maker shall intend to prepare, light, or kindle any fire to heat his lear, into which any flint or phial glass is intended to be put for the annealing the same, such maker shall give to the officer of excise under whose survey he shall then be, six hours' notice in writing of such his intention; and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall unlock and open such lear, and the mouth or entrance and iron grating thereof; and if any such maker shall neglect or refuse to light or kindle such fire within one

hour after such lear, and the mouth or entrance and iron grating thereof shall be opened by such officer, then such notice shall be void, and such officer shall again, immediately after the expiration of such one hour, lock up, fasten, and seal such lear, and the mouth or entrance and iron grating thereof as aforesaid; and such maker shall give the like and a fresh notice in writing to such officer before such lear, or the mouth or entrance or iron grating thereof shall be again opened. 51 G.3. c.69.

Officers to lock up and seal the mouth of every flint glass lear as soon as the journey is finished, if finished by Saturday evening, and if not, then to lock up and seal it at that hour, till a notice given for lighting the fire, not earlier than eight on the following Sunday evening.

§ 17. The officer of excise, under whose survey any glass-house for the making of flint or phial glass shall be, shall, so soon as any journey of flint or phial glass making shall be finished, if the same shall be finished at or before six of the clock in the evening of *Saturday* in any week, and if it shall not be finished at or before six of the clock in the evening of *Saturday* in any week, then at six of the clock in the evening of such *Saturday*, to lock, seal, fasten and secure every lear belonging to such glass-house, and the mouth or entrance and iron grating thereof, and to keep the same locked, sealed, fastened, and secured, from thenceforth until such maker shall give to such officer such notice as is hereinbefore directed of such maker's intention to prepare or kindle a fire as aforesaid to heat such lear, and in no case sooner than the hour of eight in the evening of the *Sunday* next following such locking, sealing, fastening, and securing of such lear: and if any person shall obstruct any such officer, or any person by him employed in that behalf, in so locking, &c. such lear or the mouth, &c. thereof, as such officer shall think expedient to answer the purpose by this act in that behalf intended, or shall attempt or endeavour so to do, or shall by any art whatsoever open any such lear, or the mouth, &c. thereof, after the same shall have been locked, &c., as aforesaid, before the same shall have been unlocked and opened by the proper officer, or shall wilfully break or damage any such lock, seal, or fastening, then the person so offending shall, for each such offence, forfeit 200*l.*

Penalty 200*l.*

Flint and phial glass makers to provide a weighing room, which is to be kept locked by the officer.

§ 18. Every such maker shall, at his own expence, find and provide, or construct, a good, sufficient, and secure weighing-room in each flint or phial glass-house to him belonging, which room shall be near to, and communicate with, the lear of such glass-house; and save and excepting the discharging hole of the said lear, no such room shall have more than one door or entrance into the same; and the said door or entrance shall open directly into, and form an immediate communication with, the re-weighing room hereinafter required; and no discharging-hole of any such lear shall open into any place other than such weighing-room; and such weighing-room and the entrance thereof shall be securely fastened and sealed by the officer under whose survey such maker shall be, at all times when there shall be any flint or phial glass therein, or in the lear communicating therewith, except when the same shall be opened by such officer for the purpose of weighing and taking an account of the articles respectively of flint or phial glass therein, and charging the duty thereon, in pursuance of such notice as is hereinafter mentioned, or for the purpose of such maker or his servants arranging the positions of the pans or trays of articles hereinafter mentioned, which shall have been drawn, rolled,

51 G.3. c.69. conveyed, or conducted through the lears communicating with the said weighing-room into the said weighing-room: and when any such maker shall be desirous of having the entrance of any such weighing-room unlocked or opened for the purpose last aforesaid, such maker shall give to the officer of excise under whose survey he shall then be, one hour's previous notice in writing of such his desire, and specifying in such notice the particular weighing-room which he is so desirous to have so unlocked or opened, and the particular time and hour when he desires to have the same so unlocked or opened, whereupon such officer shall attend pursuant to such notice, and shall unlock and open the said entrance, and shall so keep and continue the same for half an hour, during which time such maker, or one of his servants, shall be at liberty to arrange the positions of the said pans or trays in the said weighing-room, under the inspection of the said officer; and when the arrangement shall be finished, or at the end of the said half an hour (whichever of them shall first happen); such officer shall again secure the said entrance; and if any such maker shall neglect to find and provide or construct such weighing-room in any such glass-house to him belonging, he shall, for each such offence, forfeit 200*l.*: Provided that no such maker shall give any such notice as last aforesaid for having the entrance of any weighing room opened more than once within any 12 hours, nor shall any officer, in pursuance of any such notice, open any such entrance more than once within any 12 hours.

Penalty 200*l.*

Flint and phial glass makers to provide annealing pans or trays, with a windlass and machinery for carrying them, with the glass wares therein, through the lear, into the weighing-room.

§ 19. And every maker shall also, at his own expence, construct a proper number of iron pans or trays to receive, during the annealing thereof in the lear of each flint or phial glass-house to him belonging, all the articles of flint or of phial glass which shall be made or blown in such glass-house, and shall also find and apply to such iron pans or trays good and sufficient chains, rollers, instruments, apparatus, and machinery, proper for working the said iron pans or trays, and conveying the same with such articles of flint or phial glass therein or thereon, immediately from the mouth of such lear into the said lear for the annealing the same therein, and shall also, at his own expence, find and erect in the most convenient part of every such glass-house, a fit windlass for the drawing, rolling, conveying, and conducting every such pan or tray with the said articles, from the mouth of the said lear into the said lear, and also for drawing, &c. every such pan or tray with the said articles therein or thereon through the said lear, and for drawing, &c. the said pans or trays with the said articles from out of the said lear into the said weighing-rooom, when such articles shall have been sufficiently annealed in the said lear, that the officer of excise, under whose survey such maker shall be, may weigh and take an account of such articles in the said weighing-room and charge the duty; and if any such maker shall neglect so to make a proper number of iron pans or trays to contain and convey into and out of such lear for the purpose of annealing, or to find or apply to such iron pans or trays, or any of them, such sufficient chains, rollers, instruments, apparatus and machinery, fit for working the said iron pans or trays, or any of them, for any of the purposes in that behalf aforesaid, or shall neglect to find or erect any such fit windlass as is in that behalf aforesaid,

Penalty 200*l.*

every such maker so offending shall, for each such offence, forfeit 200*l*. 51 G.3. c.69.

§ 20. Every such maker shall, so soon as any article of flint or phial glass shall be made or blown, deposit the same on or in one of such pans or trays which shall at that time be placed within the mouth or entrance of the lear for the purpose of receiving the articles so made or blown, and shall so continue to deposit on or in the said pan or tray so placed as aforesaid, such articles, until the bottom or surface of the said pan or tray shall be filled or covered, and shall continue all such articles respectively on or in such pan or tray, until the said articles shall be conveyed or conducted on or in such pan or tray into the lear of the said glass-house as hereinafter mentioned; and so soon as the bottom or surface of such pan or tray shall be filled or covered by such articles, such maker shall, by means of such chains, rollers, instruments, windlass, and machinery as aforesaid, convey and conduct the same, with the whole of the said articles, into the said lear, for the annealing the said articles therein; and such maker shall continue each such pan or tray with the said articles therein in such lear, until the said articles shall be sufficiently annealed; and when the same shall be so annealed, shall in like manner convey and conduct the said pan or tray with the said articles from out of such lear directly unto and into the said weighing-room, and shall, without altering or disturbing the positions of such articles or any of them, on or in such pan or tray, continue the same in the said weighing-room, until the officer under whose survey such maker shall then be shall have taken an account of and weighed the said articles respectively, and charged the duty in respect thereof respectively; and if any maker shall neglect or refuse to put, lay, or deposit any article of flint or of phial glass on or in one of such pans or trays so placed as aforesaid, when and so soon as such article shall be blown or made, or shall neglect or refuse to proceed, or so to continue to deposit on or in the said pan or tray so placed as aforesaid such articles as aforesaid, until the bottom or surface of the said pan or tray shall be filled or covered, or shall neglect or refuse to continue any such articles on or in such pan or tray as aforesaid, or shall neglect or refuse so to convey or conduct any such pan or tray, with the whole of the said articles, into the said lear, for the purpose of annealing the said articles; or if any such maker shall neglect or refuse to continue any such pan or tray with the said articles in any such lear, until the said articles shall be so annealed, or shall neglect or refuse so to convey or conduct in manner in that behalf aforesaid, any such pan or tray with such articles as in that behalf aforesaid, therein or thereon, out of such lear directly unto and into the said weighing-room, or shall neglect or refuse to continue any such articles in that behalf aforesaid, without altering the positions thereof, or the position of any of them, in any such pan or tray as in that behalf aforesaid, or to continue the same in the said weighing-room until the officer under whose survey such maker shall then be, shall have taken an account of and weighed the said articles, and charged the duty, every such maker shall, for each such offence, forfeit 200*l*.

Flint glass makers to deposit the wares on the trays, and when filled, to convey them into the lear, and from thence into the weighing-room.

Penalty 200*l*.

§ 21. Every such maker shall, so soon as any journey or making of flint or phial glass shall be finished, and before the mouth, entrance, or iron grating of the lear into which the articles of that

Flint and phial glass makers to give the officer

51 G.3. c.69.

a declaration of the number of pans filled with glass, of that journey.

Penalty 100*l.*

journey or making shall have been put, shall be locked, fastened, or secured by the proper officer, deliver to the proper officer a declaration in writing, specifying the true number of such iron pans or trays as aforesaid, into or on which such articles of that particular journey or making shall have been put, and which shall have been so filled with such articles, and put or deposited in each such lear; and if any such maker shall neglect to deliver such declaration in writing, such maker shall, for each such offence, forfeit 100*l.*

Flint and phial glass makers to provide scales and weights at the glass-house.

§ 22. Every such maker shall keep sufficient and just scales and weights at the place where he shall make any flint or phial glass, and shall at his own expence find and affix within his weighing-room and re-weighing room respectively, fit and proper hooks or staples, and also permit any officer to use the same for the purpose of weighing and taking an account of and re-weighing the flint and phial glass respectively, which shall at any time be in the possession of such maker; and if any such maker shall neglect to keep such scales and weights, or either of them, or shall not at his own expence find and affix such fit and proper hooks or staples as aforesaid, or shall not permit any officer of excise to use the same, such maker shall, for each such offence, forfeit 100*l.*; and if any such maker shall, in the weighing or re-weighing of any flint or phial glass, make use of any false or insufficient scales or weights, or shall practise any art by which any such officer may be hindered from taking the just weight of any such flint or phial glass, in every such case such maker shall, for each such offence, forfeit 500*l.*, with all such false or insufficient scales and weights respectively, and the same shall be seized by any officer of excise.

Penalty 100*l.*

Making use of false scales, 500*l.*

Flint and phial glass makers to give six hours notice for having the weighing rooms opened.

§ 23. Every such maker being desirous to have any weighing-room to him belonging unlocked and opened, for the purpose of weighing and charging with the duty any flint or phial glass therein, shall give to the officer under whose survey he shall then be, six hours' previous notice in writing of his desire, and specifying in such notice each particular weighing-room which he desires to have so unlocked or opened, and the particular time and hour at which he desires to have the same so unlocked or opened; and upon such notice such officer shall attend at the time mentioned in such notice, and shall unlock and open such weighing-room; and such officer shall proceed to weigh the whole of the flint and phial glass respectively (whether whole or broken) with such scales and weights as aforesaid in the said weighing-room, and shall charge such maker with the duty, according to such weight: Provided always, that no such maker shall be at liberty to give any such notice for having any such weighing-room, or the door or entrance thereof opened for the purposes aforesaid, at any other time than between the hours of six in the morning and six in the afternoon.

Notice void for opening any weighing-room at any other time than between certain hours.

Warrant to search for glass fraudulently conveyed away.

§ 24. If any officer of excise shall have cause to suspect that any flint or phial glass which shall have been fraudulently removed away before the same shall have been weighed by the proper officer, according to the directions of this act, shall be deposited or concealed in any place whatsoever, then, if such place be within the cities of *London* or *Westminster*, or within the limits of the chief office of excise in *London*, upon oath made by such officer before the commissioners of excise in *England* for the time being, or any

two or more of them, or in case such place shall be in any other part of *G. B.*, upon oath made by such officer before one or more justices for the county, riding, division, or place where such officer shall suspect the same to be deposited or concealed, setting forth the ground of his suspicion, it shall be lawful for the said commissioners, or any two or more of them, or the justice of the peace before whom such oath shall be made, if they or he shall judge it reasonable, by special warrant under his and their respective hands and seals, to authorize such officer by day or by night, but if in the night, then in the presence of a constable or other lawful officer of the peace, to enter into every such place where he shall so suspect such flint or phial glass to be deposited or concealed, and to seize and carry away all such flint and phial glass which he shall then and there find so deposited or concealed, as forfeited; and if any person whatsoever shall let or hinder any such officer so authorised, or any other person acting in his aid in the execution of such warrant, from entering any such place where such officer shall so suspect such flint or phial glass to be so deposited or concealed, or in seizing or carrying away the same, or in the due execution of any such warrant, the person so offending shall, for each such offence, forfeit 200*l.* 51 G. 3. c. 69.

Penalty 200*l.* on persons obstructing the execution of the search warrant.

§ 25. All enamel, stained or paste glass, which shall be made in *G. B.*, shall be taken to be flint glass within this act.

Enamel, stained or paste glass.

§ 26. And in every such weighing of any such flint or phial glass, the turn of the scale shall be given in favour of the crown, and in lieu thereof there shall be allowed to such maker one pound weight upon each one hundred pounds of such flint or phial glass so weighed.

Turn of the scale to be in favour of the crown.

§ 27. And every such maker shall, at his own expence, find and construct a good and secure re-weighing room, adjoining to each flint or phial glass-house, as the case may require, to him belonging, which room shall be contiguous and next adjoining to the said weighing room, and shall be separated therefrom only by a wall not more than two feet in thickness, and the door of communication shall be in such wall between the said weighing room and re-weighing room; and no such re-weighing room shall have more than two doors or entrances into the same, one thereof being the said door of communication between the said weighing room and re-weighing room, and the other thereof opening into or communicating with any part of the premises appertaining to the glass-house to which such re-weighing room may belong; and each such re-weighing room, and the doors or entrances thereof, shall be securely locked, fastened, and sealed by the officer under whose survey such maker respectively shall be, whenever any glass which shall have been weighed and charged by such officer shall be placed or deposited therein, for the space of six hours after the same shall have been weighed, unless the same shall have been sooner re-weighed by the surveyor or supervisor of excise, according to the directions of this act: and so soon as any flint or phial glass shall be weighed by the proper officer, the maker thereof shall, with a sufficient number of his workmen, without delay or interruption and with all due diligence, remove and convey the same, and every part thereof, out of the said weighing-room into the said re-weighing room, and shall there place the same in the said re-weighing room separate from all other glass or glass wares whatsoever; and such flint or

Glass makers to provide a re-weighing room, for depositing the flint glass weighed and charged by the officer, for a certain time, unless re-weighed in the interim by the supervisor.

51 G.3. c.69.

phial glass respectively shall remain in such re-weighing room where so placed for full six hours after the same shall have been so weighed, unless the same shall have been sooner re-weighed by the respective surveyors or supervisors of excise, to the end that the said surveyors or supervisors respectively may have an opportunity to weigh or re-weigh the same; and the said respective surveyors or supervisors are to weigh or re-weigh all such flint and phial glass respectively accordingly; and if upon the re-weighing thereof any additional weight shall be discovered or found, such additional weight shall be charged with the duties payable for such flint or phial glass; and if any such flint or phial glass so removed and conveyed into any such re-weighing room shall not be re-weighed by any surveyor or supervisor within the said six hours, then the officer, under whose survey such maker shall then be, shall lock, seal, and fasten the said weighing-room and the said door of communication between the same and the said re-weighing room, and shall unlock and open the said other door or entrance into the said re-weighing room; and if any such maker shall neglect to find or construct such re-weighing room as aforesaid, or shall neglect, when any flint or phial glass shall be weighed by the proper officer, with a sufficient number of his workmen, to remove any such flint or phial glass without delay and with all due diligence from the said weighing room into the said re-weighing room, or shall neglect to place the same or any part thereof in the said re-weighing room as aforesaid, separate from all other glass whatsoever, or shall remove or suffer to be removed from such re-weighing room, any flint or phial glass before the end of six hours next after the same shall have been so weighed by the proper officer, unless the same shall have been sooner weighed or re-weighed by the respective surveyors or supervisors, the person so offending shall, for each such offence, forfeit 200*l.*: Provided that no iron grating, weighing-room, or re-weighing room, shall be deemed to be a sufficient or secure iron grating, &c. unless the same shall be approved of by the respective surveyors or supervisors of the district within which the lear of the mouth or entrance of which such iron grating shall belong, or for which the same is intended, shall be situate, or within which such weighing room or re-weighing room shall be situate.

No iron grating, weighing-room, or re-weighing room to be deemed sufficient unless approved of by the supervisor of excise.

§ 28. Proper locks, keys, and all other necessary fastenings, for securing and sealing every such lear, and the mouth or entrance and iron grating thereof, and for securing and sealing every such weighing-room and re-weighing room, and the door or entrance thereof, shall be provided by the respective surveyors and supervisors of such district, at the expence of such maker; and if any such maker shall neglect to pay for any lock, key, or other necessary fastening, which shall be provided by any surveyor or supervisor, or if any person shall obstruct any officer, or any person by him employed in that behalf, in the fixing or placing any such fastening in such manner as such officer shall direct or think expedient, or in the locking, sealing, or securing any such lear, or the mouth or entrance or iron grating thereof, or in the locking, sealing, or securing any such weighing-room, or re-weighing room, or the door or entrance of the same, or any such fastening as aforesaid, or by any means whatsoever shall open any such lock or lear, or the mouth, entrance, or iron grating thereof, or any such weigh-

Supervisors to provide locks and fastenings at the glass maker's expence.

Penalty for neglect, &c. 200*l.*

ing room or re-weighing room, or the door or entrance of the same, or shall clandestinely gain admittance or make any hole or opening into any such lear, after the same or the mouth or entrance or iron grating thereof shall have been locked, sealed, fastened, or secured as aforesaid, or into any such weighing room or re-weighing room after the same or the door or entrance of the same respectively shall have been locked, sealed, fastened, or secured as aforesaid, before the same respectively shall have been unlocked and opened by the proper officer of excise, or shall wilfully break or damage any such door, lock, seal, iron grating or fastening, every such maker or other person so offending shall, for each such offence, forfeit 200*l*. 51 G.3. c.69.

§ 29. Where any locks, keys, or fastenings shall be provided in pursuance of this act, every maker to whom such locks, &c. shall then belong, shall at his own expence, at all times when required so to do by the respective surveyors or supervisors of the division in which such his glass-house shall be situate, immediately set about altering, repairing and amending, and shall also within a reasonable time then next following, alter, repair, and amend the same respectively, according to such requisition; and if any such maker to whom any such locks, &c. or any of them shall belong, shall neglect immediately to set about altering, &c. or to alter, &c. the same when thereunto required according to this act, he shall, for each such neglect, forfeit 100*l*.

Locks and fastenings to be altered and kept in repair by the flint and phial glass makers.

Penalty 100*l*.

§ 30. Every maker of flint or of phial glass shall, so often as he shall be thereunto required by the officer under whose survey he shall then be, with a sufficient number of his workmen, assist to the utmost of his power such officer, &c. in weighing and taking an account or in re-weighing all flint or phial glass of such maker, on pain of forfeiting, for every neglect, 100*l*.

Flint and phial glass makers to assist officers in weighing and re-weighing. Penalty 100*l*.

§ 31. Every maker of flint or of phial glass shall keep all flint or phial glass respectively in his possession, and which shall not have been weighed by the officer according to this act, separate from all flint and phial glass which shall have been weighed, and from all other glass wares whatsoever, on pain of forfeiting 100*l*.

Unweighed flint and phial glass to be kept apart from all weighed flint glass. Penalty 100*l*.

§ 32. If any maker of flint or phial glass shall fraudulently remove away any flint or phial glass from any place before the proper officer shall have weighed the same, or shall neglect to produce any such glass to such officer that he may weigh the same, he shall for each such offence forfeit 500*l*. together with all such glass; and the same may be seized by any officer of excise.

Flint glass makers conveying away flint or phial glass before weighed. Penalty 500*l*.

§ 33. If any such maker shall for the annealing of any flint or phial glass use any private or concealed lear, annealing arch, oven, utensil, or place whatsoever, other than his known lear entered for that purpose, or shall practise any art for answering the purpose of a lear or annealing arch or oven, for the purpose of annealing any flint or phial glass, or if any such maker shall use any art other than an entered lear, to answer the purpose of a lear, for the annealing of any flint or phial glass, each such maker shall, for each such offence, forfeit 200*l*.

Flint and phial glass makers not to use any but an entered lear.

Penalty 200*l*.

§ 34. Every such maker shall, at or before six in the evening of *Saturday* in each week, work out into wares the whole of the metal or preparation which shall at any time during that week have been

Flint or phial glass makers to work the metal out of their flint

51 G.3. c.69.

pots by six on the Saturday evening in each week.

Penalty 200*l.*

Maker not to incur the penalty for not working out of the allowance of an inch at the bottom of any flint pot.

founded or melted in any pots to him belonging for the making of flint or phial glass, on pain for every neglect of 200*l.*: Provided always, that nothing herein-before contained shall extend to subject any such maker to the said last-mentioned penalty by reason of his not working out the allowance of one inch deep made to such maker by 17 *G.*3. *c.*39.

Makers to charge their pots with fresh materials at six in the evening of Saturday, in presence of the officer.

Penalty 200*l.*

But penalty not incurred if the metal be laded out from the pot into water in the presence of officer.

§ 35. Every such maker shall so soon as any journey shall be finished, if the same shall be finished at six in the evening of *Saturday* in any week, or if the same shall not be finished at such hour, then every such maker shall at such hour, in the presence of the officer under whose survey such maker shall then be, again charge each pot from out of which any glass wares shall have been worked in such journey with fresh materials or preparations (other than cullet or broken glass) not less than 50lbs. weight; and if any such maker shall not, in the presence of such officer, so soon as any journey shall be finished, if the same shall be finished before six in the evening of *Saturday* in any week, or if the same shall not be finished at or before such hour, then if such maker shall not at such hour, in the presence of such officer again charge each such pot with fresh materials or preparations as aforesaid, the person so offending shall, for each such offence, forfeit 200*l.*: Provided that nothing herein-before contained shall extend to subject any such maker to the said last-mentioned or any other penalty by reason of his not charging with such fresh materials or preparations as aforesaid any such pot from out of which such maker shall, in the presence of such officer, and under a previous notice in writing given by such maker to such officer by the space of two hours, have laded out into water the whole of the metal remaining in any such pots at the time of such lading as aforesaid.

No such maker to manufacture other glass in his flint glass-house, &c. on penalty of 100*l.*

§ 36. No such maker shall make within the same building by him entered or used for the making of flint or phial glass, or in any building adjoining thereto, any sort of glass or glass wares whatever other than flint and phial glass, on pain for each such offence of 100*l.*

Not to make of common bottle metal any bottle less than a reputed half pint. Penalty 50*l.*

§ 37. No maker of glass shall make of common bottle metal any bottle or bottles smaller or of less size or content than what is commonly deemed an half-pint bottle; on pain of forfeiting 50*l.*

Penalty on obstructing officers, 300*l.*

§ 38. If any person shall obstruct or hinder any officer in the execution of this or any other act relating to flint or phial glass, he shall for each such offence (other than those for which any penalty is herein-before specially imposed or provided) forfeit 300*l.*: Provided that nothing in this act contained shall extend to make it unlawful for any officer from time to time to inspect, examine, gauge, or otherwise to take an account of, the metal and materials mixed and prepared or founded or founding for the making of glass in any such glass-house or building as aforesaid, as well before such metal or materials shall be put into any pot as after the same shall be put into any pot, or to take a sample not exceeding eight ounces in the whole out of each such pot or any other vessel containing such preparation for making glass.

Forfeiture of broken glass entered for exportation on drawback.

§ 41. In addition to the penalty imposed by 17 *G.*3. *c.*39. § 37. of 100*l.* as in that section, mentioned (*a*), all such broken and waste glass shall be forfeited, and shall be seized by any officer of excise.

(*a*) See *post*, p. 175.

§ 42. All fines, penalties, and forfeitures by this act imposed, shall be sued for, recovered, levied, or mitigated, by such ways as any fine, &c. may be sued for, &c. by any laws of excise, or by action, &c. &c.; one moiety of every such fine, &c. to H. M., the other moiety to him who shall discover or sue for the same.

51 G.3. c.69. Penalties and forfeitures how to be levied.

§ 43. All the powers, authorities, methods, rules, directions, regulations, penalties, forfeitures, provisoes, clauses, matters, and things, which in and by any act or acts of parliament relating to the duties on glass, or on the materials or metal, or other preparation made use of in *G. B.* in the making of glass, or to the paying or allowing of any drawback on the exportation of glass, in force immediately before the said first day of *August* 1811, are contained, provided, settled, or established, for managing, assessing, raising, levying, collecting, recovering, adjudging, mitigating, ascertaining, enforcing, and securing the said duties, or for paying or allowing any drawback of the said duties, and for preventing, detecting, and punishing frauds relating thereto, except where the same are expressly repealed or altered by this act, shall be and remain in full force and effect, to all intents and purposes; and the said powers, authorities, methods, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters and things, except as before excepted, shall continue and be duly observed, practised, applied, used, and put in execution, throughout the whole kingdom of *G. B.*, as fully and effectually to all intents and purposes (except as before excepted) as if the said powers, authorities, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters, and things had been expressly inserted and re-enacted in this present act.

Regulations and provisions of former acts to extend to this act.

By stat. 58 *G.3. c.*21. the 49 *G.3. c.*63. and 51 *G.3. c.*69. (relating to spread window glass, crown glass, and flint and phial glass) are respectively continued to 5th *July* 1819, and from thence by stats. 59 *G.3. c.*104. and 1&2 *G.4. c.*13. until 25th *July* 1824. Stat. 59 *G.3. c.*104. is continued by stat. 5 *G.4. c.*40. until 10th *Oct.* 1827.

58 G.3. c.21. 59 G.3. c.104. 1&2 G.4. c.13. 5 G.4. c.40. Continuance of acts.

By stat. 59 *G.3. c.*104. § 3. Every maker of flint glass and phial glass shall, at his own expence, provide and make entry of proper and sufficient boxes or vessels, for containing all the chest metal and waste glass and skimmings produced on each weekly making of flint glass and phial glass, and shall from time to time as the same is produced on such weekly making, forthwith put and place in such boxes or vessels all the chest metal and waste glass and skimmings of each particular weekly making of flint glass and phial glass, and keep and continue the same in the particular boxes or vessels, in which the same shall be so put and placed, except when taken out daily for the purpose of being picked and sorted, in which case the same shall be so taken out in the presence of and weighed by the proper officer of excise, and shall be kept separate from all other glass of any other weekly making until the same is weighed, taken account of, and re-weighed as provided by law for and in respect of manufactured flint glass; and so soon as each such weekly making of glass shall be finished, shall produce the same to be weighed and taken account of by the proper officer, and re-weighed by the supervisor of excise, as provided by law for and in respect of manufactured flint glass; and shall reflux the same and every

59 G.3. c.104. Makers of flint or phial glass to provide boxes or vessels, and put therein all the chest metal and waste glass and skimmings of each weekly making; to be taken out to be picked in the presence of the officer, who shall take an account of every weekly making.

59 G.3. c. 104.
Penalty on maker for default, 200*l*.

part thereof in the next, or next but one, succeeding charge of his pot or pots for making flint or phial glass; and if any maker of flint glass or phial glass shall neglect or omit to find or provide proper and sufficient boxes or vessels for the purpose in that behalf aforesaid, or to put or place as aforesaid in one or more of such boxes or vessels all the chest metal and waste glass skimmings of each particular weekly making of flint glass or phial glass, or to keep or continue the same and every part thereof in such box or vessel, boxes or vessels, in which the same shall be put and placed as aforesaid, as and when the same are produced in the manufacture of the glass of such weekly making, except as aforesaid, until the same shall be weighed and taken account of by the proper officer, and re-weighed by the supervisor of excise, as provided by law for and in respect of manufactured flint glass; or shall neglect or omit, when and so soon as any weekly making of flint glass or phial glass is finished, to produce the same, together with the metal laded out at the end of every such weekly making of such glass, to the proper officer, to be so weighed and taken account of, and re-weighed by the supervisor as aforesaid; or shall mix, put, or place any other chest metal, or broken or waste glass, or skimmings, or other thing, with the chest metal or waste glass and skimmings of any particular weekly making of such glass; or shall produce to the officer to be weighed and taken account of, or to the supervisor to be re-weighed as aforesaid, any other chest metal, or broken or waste glass, or other thing, except such skimmings, and laded metal as aforesaid, with the chest metal or waste glass and skimmings and laded metal of that particular weekly making of glass; or shall produce to be weighed or re-weighed as aforesaid any chest metal or waste glass or skimmings or laded metal which has before been weighed and taken account of, or re-weighed as aforesaid; or shall convey away or conceal, or not reflux such chest metal or waste glass, skimmings or laded metal, or any part thereof, at such time and in such manner as aforesaid, all such chest metal, broken or waste glass, and skimmings, laded metal, and other thing, shall be forfeited, and may be seized by any officer of excise; and every maker of glass so offending shall for every such offence, forfeit the sum of 200*l*.

If in weighing the vessels of flint or phial glass of any weekly making, &c. the weight produced shall not amount to 98 parts of 100 parts of the gross quantity of metal put into the pot, the deficiency shall be charged with duty.

§ 4. Whenever any officer of excise shall weigh the vessels, articles, and utensils of flint glass or phial glass of any particular weekly making, he and they shall also weigh the chest metal and waste glass and skimmings of that weekly making, and also the metal laded out at the end thereof; and if the weight of the articles, vessels, and utensils of flint glass or phial glass of any particular weekly making of flint glass or phial glass respectively, together with the weight of the chest metal and waste glass, skimmings, and laded metal aforesaid, of the same weekly making, so produced and weighed, or re-weighed as aforesaid, shall not amount to ninety-eight parts of every hundred parts of the gross quantity of all the metal, materials, and preparations which shall have been in the pot or pots made use of in that weekly making, according to the best and highest gauge which shall or may have been taken of the fluxed metal thereof by any officer or officers of excise, the maker or makers of such glass shall be deemed and taken to have made and manufactured articles of flint glass and

phial glass of equal weight to the weight of such deficiency below ninety-eight hundred parts of the gross quantity of such fluxed metal as last aforesaid, and shall be charged with and pay duty for the same as if such last-mentioned articles had been produced to and weighed by the proper officer of excise: provided, that no such deficiency shall of itself, and without any proof of the fraudulent removal or concealment of any part of the glass of any weekly making of glass, subject any such maker as aforesaid to any penalty for having fraudulently removed or concealed the glass so deficient. 59 G. 3. c. 104.

§ 5. Every maker of flint glass or phial glass shall, and he is hereby required, to keep sufficient and just scales and weights at the place or places where he shall make or manufacture any flint glass or phial glass, and shall at his own expence find, provide, and affix fit and proper hooks or staples, and also permit and suffer any officer of excise to use the same for the purpose of weighing and taking an account of and re-weighing the chest metal, broken and waste glass, which shall at any time be in the possession of such maker and makers, and shall at all times (when requested by the officer so to do) by himself or by a sufficient number of his servants, give all necessary assistance to any officer of excise in weighing and taking a just and true account of or re-weighing such chest metal, broken or waste glass; and if any such maker shall neglect to keep such scales and weights, or either of them, or shall not at his own expence, find, provide, and affix, in manner aforesaid, such fit and proper hooks or staples as aforesaid, or shall not permit any officer of excise to use the same, or shall at any time, refuse or neglect to give such help and assistance as aforesaid, every such maker shall, for every such offence, forfeit the sum of one hundred pounds; and if any maker of glass, or his servant, shall in the weighing or re-weighing of any chest metal or waste glass, make use of, or cause or procure or suffer to be made use of, any false, unjust, or insufficient scales, weight or weights, or shall practise any art, device, or contrivance, by which any officer of excise shall or may be hindered from taking and ascertaining the just and true weight of any such chest metal, broken or waste glass, then and in every such case such maker shall for each and every such offence forfeit the sum of 500*l.*, with all such false, unjust, or insufficient scales and weight or weights respectively, and the same may be seized by any officer of excise.

Makers to keep sufficient scales and weights for the officers taking an account, and assist them in weighing the metal.

Penalty 100*l.*

Penalty on using false weights, 500*l.*

§ 6. No such maker shall be compelled to reflux or incur any penalty for not refluxing any chest metal, skimmings, or broken or waste glass that shall be mixed with and constitute part of the weighed and re-weighed chest metal, skimmings, or broken or waste glass of any weekly making of glass as aforesaid, and which such maker or his foreman or principal servant shall show and declare to the supervisor, at the time of the re-weighing of the chest metal, skimmings, broken or waste glass of such weekly making of glass, to be refuse glass, and unfit for immediate manufacture, and shall afterwards pick and separate from the rest of the chest metal, skimmings, broken or waste glass of such weekly making of glass; and that no such maker as aforesaid shall be compelled to reflux or incur any penalty for not re-fluxing any coloured or

No penalty to be incurred for not re-fluxing chest metal, &c. declared to the supervisor to be refuse glass; or for not refluxing coloured or stained glass till next making, or the one following, &c.

59 G. 3. c. 104. stained glass so re-weighed as aforesaid, until his or her next making, or next making but one, of the like coloured or stained glass; and that no such maker as aforesaid shall be subject or liable to pay duty for any deficiency of glass produced, weighed, and re-weighed, as the produce of any weekly making of glass as aforesaid, which has arisen and been occasioned by the unavoidable loss of the metal through the sudden cracking or breaking of any pot at the time the same is charged with and contained such metal, and which shall be satisfactorily shown and proved to the officer at the time the same shall so happen; and that no such maker as aforesaid shall incur any penalty by reason of his or her not refluxing at the time aforesaid any metal laded out of the pot into water, provided such metal shall be weighed and re-weighed separate, and be lodged in and kept in some room or place separate and apart from all other broken or waste glass, and under the immediate survey and inspection of the officer of excise, until all such laded metal shall be, under notice in writing delivered to the proper officer, and in his presence, put into the pot to be re-fluxed as aforesaid; any thing herein contained to the contrary notwithstanding.

Continuance of 59 G. 3. c. 104.

§ 7. This act shall continue in force until the 5th of *July* 1820, and by stat. 5 *G*. 4. *c*. 40. is continued until 10th *Oct*. 1827. *Ante*, p. 167.

49 G. 3. c. 63. Spread window and crown glass. Directions for the construction of the annealing arch or oven. Penalty for non-compliance 100*l*.

By stat. 49 *G*. 3. *c*. 63. § 5. Every maker of spread window glass or of crown glass shall construct every annealing arch or oven by him intended to be used for the annealing of spread window glass or crown glass respectively in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance into the same, and shall number the same progressively, with a durable mark; and if any such maker shall construct any annealing arch or oven contrary to this act, or shall neglect or refuse to number or mark the same according to this act, or shall make use of any annealing arch or oven not constructed in the manner before directed, every such maker shall for every such offence forfeit 100*l*.

Iron grating to be affixed to the entrance of the annealing arch, and fastenings to be provided, &c.

By § 6. Every such maker shall, at his own expence, provide and affix a good and sufficient iron grating to the mouth or entrance of every annealing arch or oven by him intended to be used for the annealing of spread window glass or crown glass respectively, such iron grating to be approved of in writing under the hand of the respective surveyors or supervisors of the division or district within which it shall be situate, and proper locks and keys, and all other necessary fastenings for securing and sealing every such annealing arch and oven, and the mouth or entrance and iron grating thereof, shall be provided by the respective surveyors and supervisors, at the expence of such maker; and when such maker shall or ought to have delivered the declaration of the number of tables contained in any such annealing arch or oven, the proper officer shall immediately lock, fasten, and seal every such annealing arch or oven, &c., and shall keep the same locked, &c. until the glass shall be taken out in the presence of the proper officer, for the purpose of being weighed and charged; and if any such maker shall neglect or refuse, at his own expence, to provide such iron grating, or to affix the same as herein directed, before such annealing arch or oven shall be made use of as aforesaid, or to pay

Maker to deliver declaration of the number of tables deposited in the annealing arch, &c. penalty on neglect.

for any lock, key, or other necessary fastening, which shall be provided by any surveyor or supervisor, according to this act, or if any person shall obstruct any officer, or any person by him employed in that behalf, in the fixing any such fastening in such manner as such officer shall think expedient, or in the locking, sealing, or securing any such annealing arch or oven, or the mouth or entrance or iron grating thereof, or any such fastening as aforesaid, or by any means whatsoever shall open any such lock or annealing arch or oven, or the mouth, &c. thereof, after the same shall have been locked, &c. before the same shall have been unlocked and opened by the proper officer, or shall wilfully break or damage any such lock, &c. every such maker or other person so offending, shall for every such offence forfeit 100*l*. 49 G.3. c.63.

Locks and fastenings to be altered and kept in repair when required on penalty of 50*l*.

And by § 7. Where any locks, keys, or fastenings shall be provided in pursuance of this act, every such maker to whom such locks, &c. shall then belong, shall, at his own expence, at all times when required so to do by the respective surveyors or supervisors, immediately set about altering, repairing, and amending, and shall also, within a reasonable time then next following, alter, &c. the same respectively according to such requisition; and if any such maker, &c. to whom any such locks, &c. or any of them shall belong, shall neglect or refuse immediately to set about the altering, &c. or to repair, &c. when thereunto required according to this act, he, for each such offence, shall forfeit 50*l*.

Notice of heating the annealing arch to be given the excise officer, on penalty of 50*l*.

And by § 8. When any such maker, &c. shall be desirous to prepare, light, or kindle any fire to heat his annealing arch or oven, into which any spread window glass or crown glass is intended to be put for annealing, such maker shall give to the officer under whose survey he then is, six hours notice in writing of his intention; and if any such maker shall neglect or refuse to prepare, &c. such fire within one hour after the time mentioned in such notice, then such notice shall be void, and such maker shall give a fresh notice before he shall prepare, &c. a fire in any such annealing arch or oven; and if any such maker shall light a fire therein without such previous notice, he shall for every such offence forfeit 50*l*.

Regulations for putting the glass, when flashed, into annealing arch.

And by § 9. Every maker, &c. shall, so soon as the same shall be made or flashed, remove all the spread window glass and crown glass respectively by him so made or flashed directly into such annealing arch or oven, and shall there place the same so as the officer under whose survey he shall then be shall approve, and so that the same may, so far as may be, be the most easily and securely inspected and examined, and the numbers and kinds thereof respectively judged of in every such annealing arch or oven; and no such maker shall at one time place or keep in any such annealing arch or oven any spread window glass and crown glass; nor shall any such maker place or keep any other sort of glass whatever in any such annealing arch or oven entered or used for the annealing of spread window glass or crown glass; and upon neglect or refusal to remove the same, so soon as the same shall be made or flashed, directly into such annealing arch or oven, or to place it as aforesaid; or if any such maker shall at one time place or keep in any such annealing arch or oven any spread window glass and crown glass, or any other sort of glass whatever, in any annealing arch or oven entered or used for the annealing of spread

49 G.3. c.63. Penalty 100*l.*

window glass or crown glass, he shall for each such offence forfeit 100*l.*

Before the annealing arch is closed a declaration of the number of tables shall be delivered on penalty of 20*l.*

By § 10. Before any such maker shall begin to close or stop up any annealing arch or oven containing any spread window glass or crown glass, he shall deliver to the proper officer a declaration in writing, specifying the true number of tables of spread or crown glass respectively deposited and contained in every such annealing arch; and upon neglect or refusal so to do he shall forfeit 20*l.*

51 G.3. c.69. No maker of spread window glass or crown glass to be liable to the penalty of 20*l.* imposed by 49 G.3. c.63. § 10. if the number of tables in any annealing arch does not vary more than 5 per cent. from the number specified in the declaration.

By stat. 51 *G.3. c.*69. § 47. Reciting, that whereas by 49 *G.*3. *c.*63. § 10. it is enacted, that before any maker of spread window glass or crown glass shall begin to close or stop up any annealing arch or oven containing any spread window glass or crown glass, he shall deliver to the proper officer a declaration in writing specifying the true number of tables of spread glass or crown glass respectively put and contained in each such annealing arch respectively; and if any such maker shall neglect to deliver such declaration in writing as last aforesaid, he shall for each such offence forfeit 20*l.*: and whereas it may sometimes happen that from errors in counting and otherwise, the true number of such tables respectively put or contained in any such annealing arch may be mistaken: it is enacted, that after the 1st day of *August* 1811, no such maker shall incur the said penalty of 20*l.* by reason of any declaration by him delivered as the declaration required by the said recited clause, not specifying the true number of tables so put and contained in any such arch, provided the number of tables respectively specified in such declaration so delivered shall not vary more than at and after the rate of five *per centum* from the true number of tables put or contained in such annealing arch.

49 G.3. c.63. Scales and weights to be provided at the glass-house.

By § 11. Every such maker, &c. shall keep sufficient and just scales and weights at the place or places where he shall manufacture the same, and shall at his own expence provide and affix within such glass-house, and within view of the annealing arches or ovens thereof, a proper hook or staple in a proper place to be approved of in writing under the hands of the respective surveyor or supervisor, and also permit any officer to use the same for the purpose of weighing and taking an account of such glass as shall at any time be in the possession of such maker; and upon neglect to keep such scales and weights, and at his own expence to provide and affix such hook, &c., and upon not permitting or suffering any officer to use the same, he shall, for every such offence, forfeit 100*l.*; and if any such maker shall, in the weighing of any such spread window glass or crown glass, use, or cause or suffer to be used, any false, unjust, or insufficient scales or weights, or shall practise any contrivance by which any such officer may be hindered from taking the true weight thereof, in every such case he shall forfeit 500*l.* with all such false scales and weights respectively, and the same may be seized by any officer of excise.

Penalty for neglect, 100*l.*

Notice to be given before any glass is drawn from the annealing arch, &c.

And by § 12. Every such maker, being desirous to draw any spread window glass or crown glass from out of any annealing arch or oven to him belonging, shall, by the space of twelve hours next before the beginning to draw, give to the officer of excise a notice in writing of his intention, specifying each particular arch or oven, and the number thereof, out of which it is in-

tended to take such glass, and the particular time and hour at which it is so intended to begin to draw; and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall open such annealing arch and oven for the purpose aforesaid, and such officer shall attend to see the whole of such glass drawn, and such maker shall immediately on such officer's attendance begin to draw, and shall continue without any unnecessary delay to draw every part thereof; and such maker shall immediately on such glass being so drawn, weigh the whole with such scales and weights as aforesaid, in the presence of such officer; and such maker shall be charged with and shall pay the duty for such glass according to such weight; and if any such maker, having given such notice and begun to draw as aforesaid, shall not so continue to draw and to weigh as herein-before directed, he shall for every such offence forfeit 100*l.*; and if any such maker shall neglect or refuse to begin to draw from his annealing arch or oven, immediately after such arch or oven, and the mouths or entrances and iron gratings thereof, shall be opened by such officer, then such notice shall be void, and such officer shall immediately lock up, fasten, and seal each and every such arch or oven, and the mouth, &c. as aforesaid, and such maker shall give the like notice to such officer before any such annealing arch, &c. &c. shall be again open: provided always, that no such maker shall be at liberty to give any such notice to draw except in the day-time, and that between six in the morning and six in the afternoon, and that every notice given for the drawing at any time other than in the day-time, and between the said hours, shall be void.

49 G. 3. c. 63.

Penalty on neglect, &c.

§ 13. Provided that in the weighing of any such glass the turn of the scale shall be given in favour of the crown, and in lieu thereof there shall be allowed to such maker 1lb. weight upon every 100lb. of such glass so weighed.

The turn of the scale to be in favour of the crown, &c.

And by § 14. So soon as any spread window glass or crown glass shall be weighed by the proper officer, the same shall be forthwith placed in a convenient place separate from all other glass or glass wares whatsoever, and shall remain where so placed for full six hours after being so weighed, unless sooner weighed or re-weighed by the respective surveyors or supervisors, to the end that they may have an opportunity to weigh or re-weigh the same, and they are hereby empowered to weigh or re-weigh all such spread window glass and crown glass accordingly; and if upon the re-weighing any additional weight shall be discovered, it shall be charged with the duties payable for such glass; and if any such maker shall refuse or neglect to place separate as aforesaid, or shall remove or convey, or cause or suffer to be removed or conveyed, from such place as aforesaid, any spread window glass or crown glass before the end of six hours next after such weighing as aforesaid, unless the same shall have been sooner weighed or re-weighed, he shall for every such offence forfeit 100*l.*

Regulations for the weighing of glass after it has been deposited, &c.

Penalty on makers making default, 100*l.*

And by § 15. Every such maker shall, so often as he shall be required by the officer of excise under whose survey he shall then be, with a sufficient number of his servants, assist to the utmost of his power such officer, or surveyor, or supervisor, in weighing and taking an account, or in re-weighing and taking an account of all such glass, on pain of forfeiting, for every neglect or refusal, 100*l.*

Makers to assist officers in weighing, on penalty of 100*l.*

49 G. 3. c. 63.
Penalty on conveying glass from the annealing arch before it is weighed, 100*l*.

By § 16. If any such maker shall convey away any spread window glass or crown glass from any annealing arch or oven before the proper officer shall have weighed the same, or shall neglect or refuse to produce any such glass to such officer, that he may weigh according to this act, he shall for every such offence forfeit 100*l*.

Glass to be kept apart till weighed.

By § 17. Every such maker shall at all times keep all spread window glass or crown glass in his custody, and which shall not have been weighed by the officer of excise according to the directions of this act, separate from all spread window glass and crown glass respectively, which shall have been weighed, and from all other glass wares whatsoever, upon pain of forfeiting 100*l*.

Makers not to use any but an entered annealing arch, or remove glass which has not been weighed, &c.
Penalty 100*l*.

By § 18. If any such maker shall, for the annealing of any such glass, use any private or concealed annealing arch, oven, utensil, or place whatever, other than his known annealing arch entered for that purpose, or if any such maker shall fraudulently remove away any spread window glass or crown glass before the same shall have been weighed by the proper officer, or shall fraudulently hide any such glass, every such maker shall forfeit 100*l*.

By § 19. If any maker of spread glass shall manufacture within the same glass-house or building, by him entered or used for the manufacturing of spread window glass, or in any glass-house or building adjoining thereto, any other species of glass or glass wares, or if any maker of crown glass shall manufacture within the same glass-house or building by him entered or used for the manufacturing of crown glass, or in any glass-house or building adjoining thereto, any other sort of glass or glass wares except plate glass as aforesaid, every such maker shall, for every such offence, forfeit 50*l*.

Penalty 50*l*.

For recovering glass fraudulently conveyed away.

By § 20. If any officer of excise shall have cause to suspect that any spread window glass or crown glass respectively, shall have been fraudulently conveyed away before the same shall been weighed by the proper officer according to this act, and shall be lodged in any place whatsoever, then if such place shall be within the cities of *London* or *Westminster*, or within the limits of the chief office of excise in *London*, upon oath made by such officer before any two of the commissioners, or if elsewhere, before one justice for the county, riding, division, or place, where such officer shall suspect the same to be lodged or concealed, setting forth the ground of his suspicion, it shall be lawful for them respectively, as the case may require, before whom such oath shall be made, if it be judged reasonable, by special warrant, to empower such officer by day or by night, but if in the night time in the presence of a constable or other officer of the peace, to enter into every such place where he shall so suspect such glass to be deposited or concealed, and to seize and carry away all such glass which he shall then and there find so deposited or concealed as forfeited; and if any person whatsoever shall obstruct any such officer so authorised or any other person acting in his aid in the execution of such warrant, from entering any such place where such officer shall so suspect such glass to be so deposited or concealed, or in seizing or carrying away the same, or in the due execution of any such warrant, the person shall, for every such offence, forfeit 100*l*.

Penalty on persons obstructing the recovery, 100*l*.

And by § 21. If any person shall obstruct any officer of excise in the execution of any of the powers to him given by this or any other act relating to glass, the person so offending therein shall, for every such offence, other than for those for which any penalty is hereinbefore specially imposed, forfeit 300*l.*; provided always, that nothing in this act shall make it unlawful for any officer of excise, at all times to inspect, gauge, or otherwise to take an account of the metal and materials mixed and prepared or founded or founding for the making of glass in any such glass-house or building as aforesaid, as well before such metal or materials shall be put into any pot or pots, as after the same shall be put into any pot or pots, or to take a sample or samples not exceeding four ounces in the whole, out of each such pot or any other vessel or utensil containing such preparation for making glass. **49 G.3. c.63. Penalty on obstructing officers, 300*l*.**

By § 22. All fines, &c. by this act imposed, shall be sued for, &c. as any fine, &c. may be sued for, &c. by any law of excise or by action, &c. in any of H. M.'s courts of record at *Westminster*, and one moiety shall be to H. M., and the other to him, her, or them who shall discover, inform, or sue for the same. **Penalties and forfeitures how to be levied.**

By § 23. Powers of former acts extended to this act.

By stat. 56 *G*.3. *c*.108. § 6. No crown glass or German sheet glass, or broad or spread window glass, shall be made in the U. K. of greater thickness in the foot superficial, and exclusive of the centre or bullion, and selvage or rim thereof, than one-ninth part of an inch, except the metal shall, before begun to be manufactured into wares, be declared by the maker, by notice in writing to be delivered to the proper officer, to be made for plate glass, and the duty upon plate glass be charged thereon; and if any such glass, except as aforesaid, shall be made of greater thickness, the same shall be forfeited, and may be seized by any officer of excise. **56 G.3. c.108. Thickness of glass not declared to be made for plate glass.**

By stat. 17 *G*.3. *c*.39. § 37. If glass shipped for exportation shall be relanded, it shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation, and moreover every person concerned therein shall forfeit 100*l.* **17 G.3. c.39. Exportation.**

[For the drawbacks upon exportation of glass, see 43 *G*.3. *c*.69. *Sched.* (C.)—51 *G* 3. *c*.69. § 48.—52 *G*.3. *c*.77.—52 *G*.3. *c*.94.—54 *G*.3. *c*.97. § 6.—55 *G*.3. *c*.113. § 9, 10.—56 *G*.3. *c*.108. § 3, 4.]

[For the duties and drawbacks on plate glass, see stat. 59 *G*.3. *c*.115.]

By stat. 26 *G*.3. *c*.77. § 3, 4. For the better regulating of the exportation of glass, every person intending to export any glass shall give, if within the limits of the chief office in *London* 12 hours' notice, elsewhere 24 hours, to the officer of excise, of his intention to pack up such glass, and of the time and place; and such officer shall attend and see the same packed up, and shall put a seal or mark thereon: and if any person shall open such package, or wilfully destroy or deface such seal or mark, (except the officers of excise,) he shall forfeit 20*l.* Provided that if such person shall not begin and proceed to pack up such glass at the time mentioned in such notice, or within one hour after, such notice shall be void, and he shall be obliged to give a fresh notice: and if after the shipping any such glass the same shall be relanded, or put into any other vessel within *G. B.* (shipwrecked, &c. excepted), the same shall be forfeited, or the value thereof, over and **26 G.3. c.77.**

above the penalty of the bond given on exportation, and may be seized by any officer of excise or customs.

19 G.2. c.12. Maker to keep scales and weights.

By stat. 19 *G.*2. *c.*12. § 14. Every maker shall keep just scales and weights at the place where the glass is made, and assist the officer in weighing, on pain of 50*l.*

10 G.3. c.44.

And by stat. 10 *G.*3. *c.*44. § 15. If he shall make use of insufficient scales or weights he shall forfeit 100*l.* but not to be prosecuted both on this and the former act. And by 28 *G.*3. *c.*37. the same shall be forfeited, and may be seized by any officer of excise.

26 G.3. c.77. Deceiving or obstructing the officer.

By stat. 26 *G.*3. *c.*77. § 8. If in weighing his stock he put any other substance therein, whereby the officer may be hindered or impeded from taking a just account, or shall forcibly obstruct such officer, he shall forfeit 100*l.*

19 G.2. c.12. 17 G.3. c.39.

And by stats. 19 *G.*2. *c.*12. and 17 *G.*3. *c.*39. § 37. If any maker or other person shall obstruct any officer in securing the duties, he shall forfeit 50*l.*

54 G.3. c.97.

By stat. 54 *G.*3. *c.*97. § 8. If any person shall assault, oppose, obstruct, or hinder any officer of excise in the execution of the powers given by this act, or shall, by force or violence, after any such officer shall have seized any common glass bottles, or other bottles, as common glass bottles forfeited under this act, rescue or cause to be rescued, or shall break, damage, or destroy any such bottles, or shall attempt so to do, he shall forfeit 100*l.*

Power of the justices.

The penalties to be recovered or mitigated as by the laws of excise (*a*), or in the courts of *Westminster;* and to be employed, half to the use of the king, and half to him that shall sue. 19 *G.*2. *c.*12. § 39.—17 *G.*3. *c.*39. § 41.—27 *G.*3. *c.*28. § 13.—32 *G.*3. *c.*40. § 9.—35 *G.*3. *c.*114. § 27.

17 G.3. c.39.

But by stat. 17 *G.*3. *c.*39. § 38. No person concerned in the glass trade, or in any glass-house, shall act as a justice in any matter relating to these duties.

Muriate of Potash.

53 G.3. c.97. Glass makers may deliver from entered warehouses muriate of potash to be used in the making of alum.

By stat. 53 *G.*3. *c.*97. § 1. It shall be lawful for any maker of glass to deliver from any warehouse, &c. entered by him, to any maker of alum, any muriate of potash, for the purpose of being used in the manufacture of alum, upon bond or security being given by such maker of alum, in double the duty of such muriate, that all such muriate shall be really and truly employed, spent, and consumed by such maker of alum in the manufacture of alum; which bond or security shall be discharged, upon the said maker of alum, or his agent or chief workman, making oath before the collector of excise of the collection in which the alum works to which such muriate shall be permitted shall be situated (which oath such collector is to administer), that all the said muriate for which such bond shall have been given was made use of in the manufacture of alum there, and for no other purpose whatsoever; and the supervisor or officer of excise, under whose survey such maker of alum shall then be, at the same time certifying his belief of the truth of the matters so sworn to.

(*a*) For which see *ante*.

§ 2. Before any maker of alum shall be permitted to receive any muriate of potash, such maker shall make true and particular entry in writing of every workhouse, &c. by him intended to be used in or for the keeping of muriate of potash, and for the using thereof in the manufacture of alum, at the office of excise within the compass or limits whereof such workhouse, &c. respectively shall be situate; and if any such maker shall receive any such muriate of potash without having first made such entry, he shall for every such offence forfeit the sum of 100*l.* together with all the muriate of potash found in any workhouse, &c. whereof no such entry as last aforesaid shall be made.

53 G.3. c.97.

Alum makers to make entry of places for keeping potash.

§ 3. There shall be paid a duty of excise of 20*s.* for every ton weight of muriate of potash delivered by any maker of glass, for the purpose of being used in the manufacture of alum, which duty (§ 4.) shall be under the management of the commissioners of excise.

A duty of 20*s.* per ton of muriate of potash.

§ 5. When any maker of glass shall have occasion to deliver any muriate of potash to any maker of alum, he shall give two hours' previous notice, in writing, of his intention to the proper officer of excise under whose survey such workhouse, &c. shall then be, and shall specify in such notice the day, and the hour of the day, when he intends to weigh and deliver the same, and the quantity thereof, with the christian and surname of the maker of alum to whom the same is to be delivered, and the place at which his alum-works are situate, and by what conveyance the said muriate of potash is to be removed; and such officer who shall be ordered by the supervisor so to do, and who shall not have any other unavoidable employment at the time, shall attend, and take account of all the muriate of potash so to be delivered, and shall make a just report and return thereof to the commissioners of excise, or to such persons as they shall appoint to receive the same, and such report or return shall be a charge upon such maker of glass.

Before delivery of potash, notice to be given to the proper officer,

§ 6. No muriate of potash shall be delivered out of any workhouse, &c. belonging to any maker of glass, for being used in the manufacture of alum, or be received at the alum works, but in the presence of the proper officer of excise, who shall make and keep an account in writing, containing the real weight or quantity of the muriate so delivered out and received at any such alum works or workhouse, &c. belonging to or used by any such maker of alum, together with the day of delivery and receipt as aforesaid; and which account so to be made and kept shall also contain the name of the maker of alum to whom the muriate of potash was delivered, and for the use of what work, and to whom belonging.

Officers to keep an account of the delivery of all muriate of potash.

§ 7. And any officer of excise may take at any time a sample of any muriate of potash, or other materials alleged to be muriate of potash, in the possession of any glass maker, or of any alum maker, paying for the same (if demanded) the value thereof; and if any glass maker or any maker of alum shall refuse to permit such officer to take such sample, he shall forfeit 100*l.*

Samples may be taken by the officer.

§ 8. Where any glass maker shall have occasion to remove any muriate of potash from any such workhouse, &c. for the making or keeping mineral alkali or flux for glass, the officer of excise shall, without fee, upon a request note being delivered to him by such glass maker, give a permit in writing, signed by him, expressing the quantity so to be removed, and the name of the person from

Permits to be granted for the removal of muriate of potash.

53 G.3. c.97. whom and to whom the same is to be removed, and that the duty in respect thereof has been paid; and the officer shall therein limit the time within which the same shall be removed from the premises, and within which the same shall be delivered and received into the premises of the maker of alum.

Note specifying certain particulars to be delivered before permits are granted.

§ 9. No permit for the removal of muriate of potash shall be granted, or be valid, unless the maker requiring the same shall send to the officer of excise authorised to grant such permit, a request note in writing, specifying the name of the maker of alum to whom it is to be sent, the quantity to be removed, the number and contents of the casks or other packages containing the same, and whether to be removed by land or by water, and by what mode of conveyance.

No muriate of potash to be admitted into the possession of a maker of alum without a permit.

§ 10. No muriate of potash shall be brought into any workhouse, &c. used by any maker of alum, without an authentic permit produced to and left with the officer of excise under whose survey such maker shall then be, on pain of forfeiting all such muriate so brought in without such permit.

On receipt of muriate of potash, notice to be given to the proper officer.

§ 11. Every maker of alum shall, within six hours next after any such muriate shall be received by him, give to the officer of excise under whose survey he shall then be, notice in writing of the receipt thereof, on pain of forfeiting *50l.*

Only a decrease of 1lb. in a cwt. allowed.

§ 12. In case in the muriate of potash brought in to be used at any alum work, in the manufacture of alum, any decrease shall be found exceeding the rate of 1lb in every cwt., the maker of alum to whose use the same was delivered, shall forfeit *50l.*

Maker of glass to keep an account of the quantity of muriate of potash delivered to alum works, and return the same to the next office of excise.

§ 13. Every maker of glass shall every day enter in a book, or on a paper to be provided for that purpose, an exact account of every quantity of muriate of potash, and the weight thereof, sold or sent out by him, with the name of the maker of alum to whom sold, &c. and the place of his alum works at which the same is to be delivered; and such book or paper shall be returned to the next office of excise every six weeks, and the truth of such entries verified upon the oath of such maker, or his chief workman or agent, before the proper collector or supervisor of excise, who shall administer such oath; and in case of neglect to keep such book or paper, or to make such entries, or to return the same, or to verify the said entries upon oath, such maker of glass shall forfeit *100l.*

Duty to be cleared in a certain time.

§ 14. Every such maker of glass shall, within one week after he shall have or ought to have made such entry, pay off all duties for muriate of potash due from him; on pain of forfeiting double the said duties.

Power of officers to enter premises.

§ 15. The officers of excise, at all times, by day and by night (but if in the night, in the presence of a constable or other peace officer), may enter into every workhouse, &c. or place used by any maker of glass or alum for storing or keeping of muriate of potash, or other matter alleged to be, or passing under the denomination of muriate of potash, and by weighing or otherwise, to take an account of the quantity and quality which shall at any time be in the possession of such maker.

Scales and weights to be provided, to take an account of the weight of

§ 16. Every maker of glass, and every maker of alum, shall keep just scales and weights at the place where he shall keep any muriate of potash, and at his own expence find and affix a proper hook or staple in a proper place, to be approved of under the

hands of the surveyor or supervisor of excise of the district, and also permit any officer of excise to use the same, for the purpose of weighing and taking an account of the muriate of potash in the possession of any such maker: and if any such maker shall neglect or refuse so to do, or shall, in the weighing muriate of potash, use or cause or suffer to be used, any false or insufficient scales or weights, or shall practise any art or contrivance by which the officer may be hindered from taking the just weight, and ascertaining the true quantity, every such maker of glass, or of alum (as the case may be), shall forfeit 100*l.* together with all the false or insufficient scales and weights.

53 G. 3. c. 97. — the muriate of potash.

§ 17. Every maker of glass, and every maker of alum shall, when required by the proper officer of excise, with a sufficient number of his servants, assist to the utmost of his power such officer in weighing and taking such account, on pain of forfeiting 100*l.*

Makers to assist in taking an account of the weight.

§ 18. If any person shall remove or carry away any muriate of potash, with intent to evade the duty, he shall forfeit 50*l.*, and all the muriate of potash so taken, &c.

Penalty on removing muriate of potash to evade duty.

§ 19. If any muriate of potash shall be deposited or concealed, with an intent to defraud the king of the duties, it shall be forfeited, and may be seized by any officer of excise, and the person in whose custody it shall be found shall forfeit 100*l.*; and if any such officer shall have cause to suspect that muriate of potash shall be so deposited or concealed in any place whatsoever, if such place be within the limits of the chief office of excise in *London*, upon oath made by such officer before the commissioners of excise, or any two of them, or before one justice of the county, city, or liberty where such place shall be, or in case such place shall be in any other part of *G. B.*, upon oath made by such officer before one justice for the county, &c. where such officer shall suspect the same to be deposited or concealed, setting forth the ground of his suspicion, it shall be lawful for such commissioners or justice respectively, if they judge it reasonable, by special warrant, under their respective hands and seals, to authorise such officer by day or by night, but if in the night time, then in the presence of a constable or other peace officer, to enter into every such place where he shall so suspect such muriate of potash to be so deposited or concealed, and to seize and carry away all such muriate of potash which he shall then and there find so forfeited.

Penalty on concealing potash.

Power to search suspected places.

§ 20. If any maker of alum, on whose account any muriate of potash shall be delivered from any maker of glass, or if any other person shall use such muriate of potash, or any part thereof, for any other purpose than in the manufacture of alum; or shall, after any such muriate of potash shall have been used in the manufacture of alum, use the *residuum, caput mortuum*, or remains thereof, for any other purpose than in the manufacture of alum, such maker or other person shall forfeit 100*l.*

Muriate of potash from glass-houses to be used only in the manufacture of alum.

§ 21. If any question shall arise whether any substance, matter, or material, seized as muriate of potash forfeited under this act, be muriate of potash, the proof of the same not being muriate of potash shall lie upon the owner or claimer thereof.

Proof of muriate of potash to lie on the owner.

§ 22. In all cases where any officer of excise is authorised or required to ascertain the quantity of muriate of potash by weight,

How muriate of potash shall be weighed.

53 G.3. c.97. no less quantity shall be weighed at one draft than 1 cwt.: and every such officer, in the weighing, shall give the turn of the scale in favour of the crown, and in lieu thereof shall make an allowance at the rate of 5lbs. in every half ton.

Penalty on persons obstructing officers. § 23. If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer of excise in the due execution of this act, or shall by force or violence, after any such officer shall have seized any muriate of potash, or any substance or material as or for muriate of potash forfeited under this act, rescue or cause to be rescued any such muriate of potash, or substance, &c., or shall attempt so to do, every such person shall forfeit 100*l*.

Penalty on bribing officers. § 24. If any person shall give or offer to give any bribe or reward to any officer of excise, in order to corrupt such officer, either to do contrary to his duty, or to neglect to do any act belonging to the business of such officer in the execution of this act, or to connive at or conceal any fraud relating to any of the regulations by this act prescribed, or not to discover the same, every person so offending shall, for every such offence (whether such offer be accepted or not), forfeit 500*l*.

§ 25. Glass makers or alum makers not to act as justices, nor persons interested in such trading or business.

Penalties how to be recovered. § 26. Fines, penalties, and forfeitures shall be recovered or mitigated, as any fine, &c. may be by any law of excise, or by action of debt, &c. in any of H. M.'s courts of record, one moiety to H. M., the other moiety to him who shall inform, discover, or sue for the same.

§ 27. Powers of former acts relating to the excise to extend to this act,

§ IV. (8.) Hops.

[9 Ann. c.12.—6 G.1. c.21.—6 G.2. c.37.—7 G.2. c.19.—24 G.2. c.40.—26 G.3. c.5.—39 & 40 G.3. c.81.—43 G.3. c.69.—45 G.3. c.68.—c.94.—48 G.3. c.134.—54 G.3. c.123.—59 G.3. c.52.—1&2 G.4. c.100.—4 G.4. c.46.]

By stats. 43 *G.3. c.*69. 45 *G.3. c.*94. 59 *G.3. c.*52. The duties upon hops are imposed.

7 G.2. c.19. Importation. By stat. 7 *G.2. c.*19. § 1. If any foreign hops shall be landed before entry and duty paid, or without warrant for landing, the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 5*s*. for every pound weight.

26 G.3. c.5. Exportation. By stat. 26 *G.3. c.*5. § 1, 2. 4. Hops of *British* growth may be exported to *Ireland*, bond being first given to the commissioners of excise that the said hops shall not be relanded, and oath made before such person as they shall appoint, that the duties have been duly charged, whereupon the person exporting the same shall have a drawback of the duties before paid; and provided the said hops shall be relanded, or put into any ship in *G. B.*, (except in case of shipwreck or unavoidable accident,) the same, or the value thereof, shall be forfeited, over and above the penalty of such bond; and may be seized by any officer of the customs or excise.

By stat. 1&2 *G*.4. *c*.100. § 1. There shall be allowed for every pound weight avoirdupois of hops grown, cured, and made fit for use in *G. B.*, and exported, from and after the 12th of *January*, 1821, as merchandize to foreign parts, the whole of the excise duty paid thereon. **1&2G.4. c.100. A drawback of the excise duty to be allowed on the exportation of hops.**

§ 2. All such hops shall be exported as aforesaid in the original package and packages in which the same were charged with duty, each such package containing at the least one hundred weight of such hops, under and subject to the several provisions contained in stat. 26 *G*.3. *c*.5., for regulating the exportation of hops to *Ireland*, and other acts relating to the exportation of any goods subject to a duty or duties of excise, upon drawback; and all the rules, regulations, restrictions, provisions, fines, penalties, and forfeitures, contained in the said act and acts, shall be applied and put in execution in respect of the exportation of hops to foreign parts, so far as such rules, &c. are applicable, as fully as if the same were repeated and again enacted in this act. **Hops to be exported in the original package containing not less than one cwt. subject to the regulations of 26 G.3. c.5., &c.**

And by stat. 43 *G*.3. *c*.69. *sched.* (A.) and 45 *G*.3. *c*.94. for every pound weight avoirdupois of hops grown in *G. B.* which shall be cured and made fit for use, shall be paid by the owner or possessor thereof, a duty of 2*d*. **43 G.3. c.69. 45 G.3. c.94. Home duty.**

In order whereunto, by stat. 9 *Ann*. *c*.12. § 6. Every person who shall plant or have growing any hops for sale or not for sale, shall yearly on or before *August* 1, give or send notice in writing under his hand, at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish, township, or place, and the name of the owner or occupier; on pain of 40*s*. an acre. **9 Ann. c.12. Hop grounds to be entered.**

§ 7. But such person shall not be obliged, for giving notice, to go further than the next market town.

The officer who shall receive the notice shall, in five days, enter the same in a book to be kept at the office for that purpose, on pain of 40*s*.

§ 8. No person shall use any ousts, storehouse, or other place, or any kiln for curing or keeping of hops, unless notice thereof shall have been given, on pain of 50*l*. **Places of curing and keeping to be entered.**

§ 9. And all hops shall in six weeks after gathering or picking be brought to be cured and bagged at such ousts or other places notified, and no other, on pain of 5*s*. a pound.

§ 15. The officer shall at all times by day or night, and if in the night in the presence of a constable, be permitted on his request to enter into the oust, storehouse, or other place, used by any person for growing, curing, or keeping hops; and if the planter or owner obstruct him, he shall forfeit 20*l*. **Officers to enter and survey.**

By stat. 6 *G*.1. *c*.21. § 25. The owners of hops, before they respectively begin to bag or weigh their hops, shall send notices in writing under their hands to the next excise officer or officer for the duty, of the day and hour of beginning either to bag or to weigh; which notice, as to such as shall be bagged or weighed the first week, shall be given twenty-four hours before; and as to every other bagging or weighing, forty-eight hours, on pain of 50*l*. **6 G.1. c.21. Notice of bagging and weighing.**

But by stat. 39&40 *G*.3. *c*.81. § 6. No such owner, planter, or grower shall be obliged to give more than twenty-four hours' notice of his intention to weigh hops; provided that the particular **39&40 G.3. c.81. Notice of weighing.**

time be specified in such notice, which shall be between the hours of four in the morning and five in the evening.

9 Ann. c.12. Officers to make entry, &c.

And by stat. 9 *Ann.* c.12. § 11. The officer shall cause an entry of the said weight to be made in his book, and shall make return thereof in writing to the commissioners, or to whom they shall appoint, leaving a true copy (if demanded) of such return under his hand with the planter or owner; and if he shall neglect or refuse to leave such copy (after demand in writing, 12 *G.*1. *c.*28. § 30.) he shall forfeit *5l.*

39&40 G.3. c.81. Owners to keep scales and weights.

By stat. 39&40 *G.*3. *c.*81. § 8. Every owner and grower shall keep just and sufficient scales and weights at the place of weighing and shall permit any supervisor to use the same for re-weighing, on pain of forfeiting *50l.* And if any such person shall, for the re-weighing of such hops, make use of any insufficient scales or weights, or practice any device to deceive such supervisor, he shall forfeit *100l.* together with such false scales and weights, which may be seized by any officer of excise.

Owners to assist in weighing, if required.

§ 9. Every owner and grower when required by any supervisor shall cause his hops to be put into and taken out of the scale, and shall, with a sufficient number of his servants, assist in the re-weighing thereof, on pain of forfeiting for every neglect and refusal *50l.*

No inferior officer to weigh hops between certain hours.

§ 7. No officer inferior to a supervisor shall be permitted to weigh hops between the hours of five in the evening and four in the morning, and if any such owner or grower shall suffer any inferior officer to weigh hops between the hours aforesaid, he shall forfeit *20l.*

39&40 G.3. c.81. repealing 14 G.3. c.68. Bags to be marked.

By stat. 39&40 *G.*3. *c.*81. § 1, 2. the 14 *G.*3. *c.*68. is repealed, and in lieu thereof after 28th *July* 1800 every owner or grower of hops, before he begins to put any hops into any bag or pocket, shall mark on the outside of each, in large legible characters, with durable ink or paint, his name and place of abode, on pain of forfeiting *20l.*

Weight of the bags.

§ 3. No hops shall be bagged into any bag of greater weight than in the proportion of 10lb. for every 112lb. of the gross weight of bags and hops, on pain of forfeiting *20l.*

Officer to mark the gross weight on the bag. Penalty on counterfeiting such mark, or defacing the same.

§ 4. When the officer of excise shall have weighed and taken an account of any hops for the purpose of charging the duty thereon, he shall mark in like manner on every bag or pocket the gross weight thereof, together with the year in which such hops were grown, and the progressive number according to the number of bags charged to each owner, planter, or grower in each such current year. And if any person shall counterfeit or alter any such marks, or procure the same to be done, he shall forfeit *100l.* for every such offence. And if any person shall wilfully deface or obliterate any mark hereby directed to be made, or cause the same to be done or connive thereat, he shall forfeit *20l.*

6 G.1. c.21. Hops may be put into casks instead of bags.

By stat. 6 *G.*1. *c.*21. § 27, 28. The owners may, if they think fit, put the hops into casks instead of bags, giving the like notice, and being subject to the same regulations for casking as for bagging.

And the officer shall cause the casks to be weighed, and the weight to be marked on the cask, and also the weight of the hops therein.

48 G.3. c.134.

By stat. 48 *G.*3. *c.*134. It is enacted, that in addition to the marks required to be made on the outside of every bag and pocket of hops, there shall be marked by the owner, planter, or grower of hops, in the form and manner in which the before-mentioned particulars are required to be marked, the name of the parish and of the county in which the hops put into any such bags or pockets were or shall be grown; and if any owner, &c. shall put hops into any bag or pocket, before the same shall have been marked as by this act required, he shall for each such offence forfeit 20*l.*

§ 2. If any person shall counterfeit, or remove, alter, erase, or obliterate, or cause to be counterfeited, removed, altered, erased, or obliterated, any of the marks required by this act, or any other act in force, to be put on bags or pockets of hops, he shall forfeit 20*l.*

By § 3. These penalties to be recovered as other penalties may by the excise laws be recovered; one moiety to the king and one to the informer.

54 G.3. c.12. Growers of hops not to put any name or place of abode than their own on bags or pockets.

By stat. 54 *G.*3. *c.*123. § 1. Every owner, planter, or grower of hops, before he begin to put hops into any bag or pocket, shall mark on the outside of each bag, in large and legible letters of four inches in length, and half an inch in breadth; and on the outside of every pocket, in large and legible letters of three inches in length, and half an inch in breadth, with durable ink or paint, his name, and the parish and county in which the hops were grown; and if any owner, planter, or grower of hops, or other person, shall put hops into any bag or pocket, without having marked thereon the things herein required, or shall, before or after such hops have been packed, mark thereon the name of any other person, parish, or county than as herein prescribed, or the symbol appertaining to any other county or place, the owner, planter, or grower, or other person so offending, shall forfeit 20*l.* for every bag or pocket.

§ 2. If any owner, planter, or grower shall knowingly put hops of different qualities and value in the same bag or pocket, he shall forfeit 20*l.* for every bag or pocket.

9 Ann. c.12. Deceit in bagging.

By stat. 9 *Ann. c.*12. § 23. No person shall take any hops of foreign growth out of the bags in which they are imported, and rebag the same in *British* bagging, in order to sell or export them as *British* hops, on pain of 10*l.* a hundred weight. And if any person shall endeavour to defraud the king of the duty, by using twice or oftener the same bag, with the officer's mark thereupon, he shall forfeit 40*l.*

Removal before bagging.

§ 16. No planter or owner shall (on pain of 50*l.*) remove or suffer to be removed from his oust, storehouse, or other place, any hops until they have been cured, bagged, and weighed, and the duties ascertained, unless where the officer, after notice, shall not attend the bagging and weighing.

39&40 G.3. c.81. Hops not to be removed for 12 hours, unless re-weighed by the supervisor.

By stat. 39&40 *G.*3. *c.*81. § 5. No hops shall be removed from the place of weighing until twelve hours next after, unless the same shall have been re-weighed by the supervisor, and if upon any such re-weighing any additional weight shall be found, the same shall be charged with the duty; and if any such owner or grower shall convey or cause to be conveyed away any such hops

9 Ann. c. 12. contrary to the meaning hereof, he shall forfeit *50l.* for every such offence.

Obstructing officers. § 10. And every person who shall obstruct or hinder any officer of excise in the due execution of this act, shall forfeit 100*l.*

Concealing. § 17. If any planter or owner shall conceal any hops, to avoid the duties, he shall forfeit 20*l.* and the hops concealed.

9 Ann. c. 12. Privately conveying. By stat. 9 *Ann. c.*12. § 18. If any picker or gatherer of hops, or other person, shall privately convey any hops from the place of growing, or where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he shall forfeit *5s.* a pound.

9 Ann. c. 12. Payment of the duties. § 14. The planter or owner shall in six months after the hops shall be cured, bagged, or weighed, pay off the duties, on pain of double duty, two-thirds to the king and one-third to the informer.

7 G. 2. c. 19. Adulterating hops. By stat. 7 *G.*2. *c.*19. § 2. If any person shall mix with hops any drug or other thing to alter the colour or scent, he shall forfeit *5l.* a cwt. (P.)

R v. *Pack, T.* 35 *G.*3.—6 *T.R.* 374. The defendant was convicted on 7 *G.*2. *c.*19. § 2. in the penalty of *5l.* for putting in the fire, by which 100 cwt. of hops were drying, a quantity of sulphur and brimstone to alter the colour thereof, the vapour and fumes of which ascended to the hops placed over such fire, and, the hops being then in a moist state, fixed to the hops and made them appear brighter. Ld. *Kenyon*, C. J. was clearly of opinion that this was an offence within the act of parliament, even though the vapours were a melioration of the hop (which was not the case), and the conviction was affirmed.—[The vapour of the brimstone gives a false colour and a false value to the hops.]

9 Ann. c. 12. Using other things instead of hops. By stat. 9 *Ann. c.*12. § 24. No common brewer, innkeeper, or victualler, shall use any broom, wormwood, or any other bitter ingredient, in brewing beer or ale for sale, to serve instead of hops, on pain of 20*l.* (except the infusing of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer. And see tit. (*Ale & Beer*) *ante*. p. 87—90.

Penalties how to be recovered. The penalties aforesaid (where not otherwise directed) shall be recovered and mitigated as by the laws of excise (*a*) and distributed half to the king and half to him that shall sue. 9 *Ann. c.*12. § 26.—24 *G.*2. *c.*40. § 29.—26 *G.*3. *c.*5. § 8.—39 & 40 *G.*3. *c.*81. § 11.

9 Ann. c. 12. Hops liable to distress for the duties and penalties. And by stat. 9 *Ann. c.*12. § 19. All hops in the custody of any planter or owner, or persons in trust for him, shall be liable to the duties in arrear and to the penalties, in the same manner as if the debtor or offender were the lawful owner.

6 G. 2. c. 37. Cutting hop-binds. By stat. 6 *G.*2. *c.*37. § 5, 6. If any person shall unlawfully and maliciously cut any hop-binds growing on poles in any plantation of hops, he shall be guilty of felony.

4 G. 4. c. 46. Offenders to be liable to transportation. And by stat. 4 *G.*4. *c.*46. § 1. He shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years.

(*a*) For which see *ante*, Sect. III.

Which offence is treated of more at large in the title **Black Act**, Vol. I.

§ IV. (9.) Leather. (*a*)

[2 Ann. c.11. — 9 Ann. c.11. — 5 G.2. c.2. — 5 G.3. c.43. — 10 G.3. c.44. — 15 G.3. c.35. — 24 G.3. sess.2. c.41. — 26 G.3. c.77. — 28 G.3. c.37. — 31 G.3. c.43. — 34 G.3. c.63. — 35 G.3. c.97. — 38 G.3. c.54. — 41 G.3. (U.K.) c.91. — 43 G.3. c.69. — 52 G.3. c.143. — 53 G.3. c.103. — 55 G.3. c.30. — c.69. — c.113. — 56 G.3. c.110. — 59 G.3. c.32. — c.105. — 3 G.4. c.27. — c.83. — 5 G.4. c.55.

43 G.3. c.69. Importation and exportation.

By stat. 43 *G.3. c.*69. A duty is laid upon all hides and skins, vellum, and parchment tanned in *G. B.*; and drawbacks allowed on the exportation thereof. *Sched.* (A.) and other duties are also imposed by 49 *G.3. c.*98. and 52 *G.3. c.*94.

3 G.4. c.83. Additional duties granted by 52 G.3. c.94. repealed.

By stat. 3 *G.4. c.*83. From and after the 5th of *July* 1822, the several additional duties of excise on hides and skins, and parts and pieces of hides and skins, and on vellum and parchment, and on leather manufactured into goods and wares, granted by stat. 52 *G.3. c.*94. shall be repealed, and shall then cease and determine, except any arrear thereof.

56 G.3. c.110. Drawback repealed.

§ 2. From and after the said 5th of *July* 1822, the several *drawbacks* granted and allowed by stat. 56 *G.3. c.*110., and also the said act, shall be repealed.

Instead of the drawbacks repealed the following shall be paid: Drawbacks.

§ 3. Instead of the several drawbacks hereby repealed, there shall, from and after the said 5th of *July* 1822, be allowed the following drawbacks; that is to say,

	£.	s.	d.
For every pound weight avoirdupois of all hides and skins, and parts and pieces of hides and skins, tanned or *tawed* in *G. B.*, and duly marked, for which the duty imposed and payable thereon respectively shall have been paid, and which shall be duly exported from *G. B.* to foreign parts as merchandize, - -	Two-thirds of the duty.		
For every pound weight of all hides and skins, &c. *tanned and curried in G. B.* and duly marked, &c. &c. and which shall be duly exported, &c. - - - -	0	0	2
For every pound weight of all leather *tanned or tawed* in *G. B.*, for which the duty imposed and payable thereon respectively shall have been paid, and which shall be manufactured and actually made into boots, shoes, saddles, or gloves in, and duly exported from, *G. B.*	0	0	3
For every pound weight of all leather tanned or tawed in *G. B.*, for which the duty imposed and payable thereon respectively shall have been paid, and which shall be manufactured and actually made into goods and wares, *other than boots, shoes, saddles*, or *gloves*, in, and duly exported from, *G. B.* - - -	0	0	2
For all goat skins tanned with sumack, or otherwise, to resemble *Spanish* leather, in *G. B.*, duly marked, and all sheep skins tanned for roans (being after the nature of *Spanish* leather), in *G.B.*, duly marked, for			

(*a*) See also title Leather, Vol. III.

3 G.4. c.83.

which the duty imposed shall have been paid, and which shall be duly exported - - {The whole duty.

For every pound weight of boots or shoes made in *G.B.*, the upper leathers, vamps, and boot legs of which are made of morocco, *Spanish* leather, or kid skins, and for which the duty imposed shall have been paid, and which shall be duly exported - - 0 0 4

For every pound weight of all buck, deer, or elk skins, dressed in oil in *G. B.* for which the duty imposed shall have been paid, whether manufactured and actually made into goods or wares or not (but if not, then to be duly marked), and which shall be duly exported 0 1 0

For all other hides and skins, and parts and pieces of other hides and skins, dressed in oil in *G. B.*, and duly marked, for which the duty imposed shall have been paid, and which shall be exported - - {The whole duty paid.

For every pound weight of all other hides and skins dressed in oil in *G. B.*, for which the duty imposed shall have been duly paid, and which shall be manufactured and actually made into goods and wares (except sheep and lamb skins dressed in oil, and made into goods and wares, other than gloves) in, and duly exported from - - - - 0 0 6

For every pound weight of all sheep and lamb skins dressed in oil in *G. B.*, for which the duties imposed shall have been duly paid, and which shall be manufactured and actually made into goods and wares other than gloves in, and duly exported from - 0 0 4

5 G.4. c.55.

By stat. 5 *G.*4. *c.*55. § 1, 2, 3. The duties and drawbacks on hides, skins, and leather manufactured in *Ireland* are assimilated to those payable on the like articles in *G. B.* and are placed under the control of the excise, § 6.

3 G.4. c.83. Drawbacks to be paid and allowed in the manner herein mentioned.

By stat. 3 G.4. *c.*83. § 4. The said several drawbacks shall be paid and allowed in the like manner as former drawbacks, except as altered by this act, &c.

Penalty on tanners, &c. concealing hides, &c., 200*l*.

§ 5. If any tanner, tawer, or dresser of hides and skins in oil, or maker of vellum or parchment, shall remove or conceal any hide or skin, or part or piece of any hide or skin, or any vellum or parchment, with intent to evade the duty or duties of excise thereupon chargeable or payable, he shall for every such offence forfeit the sum of 200*l*., to be recovered, applied, and accounted for as any other penalty under any law of excise.

Notice to be given to the excise officer, before whom the hides, &c. shall be produced to be weighed and stamped, &c. and such hides shall be kept separate from others for 24 hours after charged with duty.

§ 6. Before any hides or skins, or pieces of hides or skins, or any vellum or parchment, shall be weighed or counted by any officer of excise, and charged with duty, or stamped or marked to denote such charge, the tanner, tawer, or dresser of hides and skins in oil, or maker of vellum or parchment, desirous of having the same so charged and stamped or marked, shall give notice in writing to the proper officer of excise, specifying the day and hour on which, and the number of hides and skins, parts or pieces of hides or skins, and skins or pieces of vellum or parchment, which he shall desire to be weighed or counted, and charged with, and stamped or marked to denote the charge of duty, and shall deliver every such notice to the proper officer 24 hours at the least, if the entered premises of such trader, &c. are situate within

a market town, and 48 hours at the least if such premises are situate without a market town, before the hour for weighing or counting any such goods mentioned in such notice, and shall, before such weighing or counting shall be begun, place and produce all the hides and skins, &c. &c. specified in such notice, in an entered room, and in which no other hides or skins, or parts or pieces of hides or skins, vellum or parchment, shall then be, and shall from that time continue all such hides or skins, &c. &c., alone in such room for the space of 24 hours next after the same shall have been charged with duty, or stamped or marked, unless the same shall have been weighed or counted, or be sooner re-weighed or re-counted by a surveyor or supervisor, and shall not, during the time aforesaid, conceal, or remove any hide or skin, or any such part or piece of any hide or skin, or any such vellum or parchment so weighed or counted, and charged with duty, or stamped or marked, out of such room, or bring into, or cause or suffer to be brought into such room, any other hide or skin, or part or piece of any other hide or skin, or any other vellum or parchment, upon pain of forfeiting for every such offence, and for every refusal or neglect to observe any of the several provisions herein-contained, the sum of 200*l.*, to be recovered and accounted for as any other penalty under or by any law of excise. Penalty 200*l.*

§ 7. It shall not be lawful for any currier or other person not being an entered tanner, to use sumack in currying of any hide or skin, or in the preparation or dressing of any leather, except only for the purpose of colouring leather for making boot tops or saddles, upon pain of forfeiting for every such offence the sum of 100*l.*, to be recovered and accounted for as any other penalty under any law of excise, together with the forfeiture of all such sumack, hides, skins, and leather, which shall be seized by any officer of excise. No currier, or other person not being a tanner, to use sumack in currying, &c. except for boot-tops or saddles. Penalty, 100*l.*, &c.

And by stat. 9 *Ann.* *c.*11. § 6. 44. After the duty shall be paid on importation, the officers of the customs shall cause every hide or skin to be marked, to denote the payment of the duty. 9 Ann. c. 11.

But by stat. 15 *G.*3. *c.*35. Raw or undressed goat skins may be imported for five years, duty free; which act is by 31 *G.*3. *c.*43. § 7. made perpetual. 15 G.3. c.35.

The said several duties for and upon all hides and skins, and parts and pieces of hides and skins, tanned, tawed, or dressed, to be paid by the tanners, tawers, and dressers of hides and skins respectively.

And the duties upon vellum and parchment to be paid by the respective makers thereof.

By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shumack; and by hides and skins *dressed in oil* are meant such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in allum and salt, or meal or other ingredients properly used by the tawers of white leather. 9 *Ann.* *c.*11. § 3. 9 Ann. c. 11. What is meant by hides tanned, dressed in oil, and tawed.

[*N. B.* By stat. 34 *G.*3. *c.*63. *Samuel Aston* is allowed to tan hides and skins in a particular manner, as mentioned in his letters patent. And by stat. 35 *G.*3. *c.*97. All hides and skins tanned by the

said method, or by any method whatever, shall be deemed to be within the meaning of the acts relating to the duties on hides and skins.]

43 G.3. c.69. Licences to be taken out by tanners.

And by stat. 43 *G*.3. *c*.69. *sched*. A. Every tanner shall take out a licence annually, for which he shall pay, if within the bills of mortality, 5*l*. (and by stat. 55 *G*.3. *c*.30. 5*l*. in addition,) elsewhere 2*l*. 10*s*. (and the further sum of 2*l*. 10*s*. by 55 *G*.3. *c*.30.) on pain of 30*l*. See 24 *G*.3. *sess*.2. *c*.41. § 1.

Tawers.

Every *tawer* shall take out a licence annually, for which he shall pay 1*l*., and 1*l*. additional by 55 *G*.3. *c*.30. on the penalty of 10*l*. *Id*.

Dressers in oil.

And every *dresser of hides in oil* shall take out a licence annually, for which he shall pay 2*l*., and 2*l*. additional by 55 *G*.3. *c*.30. on the penalty of 20*l*. *Id*.

Curriers.

And every *currier* shall take out a licence annually, for which he shall pay 2*l*., and 2*l*. additional by 55 *G*.3. *c*.30. on the penalty of 20*l*.

Makers of vellum.

And every maker of *vellum or parchment* shall take out a licence annually, for which he shall pay 1*l*., and 1*l*. additional by 55 *G*.3. *c*.30. on the penalty of 10*l*. *Id*.

Licences to be renewed annually.

§ 7. And every person who shall take out such licences shall renew the same annually, ten days at the least before the end of the year, on the like penalties as aforesaid.

Persons in partnership.

§ 8. Provided, that persons in partnership need only take out one licence for one house. (*a*)

53 G.3. c.103. Transfer or renewal of licence.

And by stat. 53 *G*.3. *c*.103. Upon the death of any person licensed, or upon the removal of any person from the house or premises in which his licence shall authorise him to make or manufacture, deal in, vend, or sell, any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorise the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted.

2 Ann. c.11. Who deemed tawers or dressers.

By stat. 2 *Ann*. *c*.11. § 28. Collar-makers, glovers, bridle-cutters, and others, who dress skins or hides, or pieces thereof, in oil, allum, and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers.

9 Ann. c.11. No leather to be twice charged.

By stat. 9 *Ann*, *c*.11. § 3. Any hide or skin which hath once paid the duty, under one denomination, shall not be charged under any other denomination.

Officers for these duties.

§ 13. 38. The commissioners of the treasury shall appoint commissioners of these duties, who shall have the same powers as the commissioners of the excise.

Places of working to be entered.

§ 15. Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer of their names and places of abode, and of their tan-houses, yards, workhouses, mills, or other places, where they in-

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(*a*) N.B. The duties by 43 G.3. *c*.69. are granted without limitation of time. Those by 55 G.3. *c*.30. were limited to 5 April, 1819; but by stat. 3 G.4. *c*.27. they are continued until 5 July, 1826.

tend to tan, taw, or dress hides or skins, or make vellum, or parchment, before they use the same, on pain of 50*l.*

§ 17. And if any person shall not make due entry, and give account of the hides and skins, or shall use any private tan-yard, workhouse, pit, fat, mill, or place, he shall forfeit 20*l.* and the goods found in such private tan-yard, or place not entered, or the value thereof, shall also be forfeited.

§ 17. The officers, at all seasonable times in the day-time, may enter into any tan-yard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10*l.* — Officers to enter and survey.

And by stat. 41 *G.*3. (U. K.) *c.*91. § 10. If any hide or skin, tanned, tawed, or dressed in oil, shall be found in any place (except on entered premises) without having thereon the stamp, denoting the charging of the duty, the same shall be forfeited and seized; and the person in whose possession it shall be found shall for each offence forfeit 100*l.* — 41 G.3. c.91. Hides found in unentered place. Penalty 100*l.*

By stat. 9 *Ann. c.*11. § 16. The said tanners and others shall give notice to the officer of their places for drying and keeping hides or skins, vellum or parchment, and they shall give two days' notice in writing to the officer, before they take the said goods out of the mill, wooze, liquor, oil, or other materials, or before the hanging up in order to be dried; and they shall permit the officers to take an account; and shall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the said goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administered by any justice or collector, or supervisor; and they shall not remove any of the said goods from the place of drying until the duty be first charged, entered, and marked. — 9 Ann. c.11. Notice of removing to the place of drying.

§ 17. If any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the said goods contrary to this act, he shall forfeit 20*l.* and such goods, or the value thereof. — Penalty for neglect.

§ 17. If any tanner or other such person shall conceal any hide or skin, vellum, or parchment, or any part thereof, he shall forfeit 20*l.* and also the goods concealed, or the value thereof. — Concealing to avoid the duty.

§ 12. Prohibits the shaving of hides before the same be thoroughly tanned, which provision is repealed by stat. 56 *G.*3. *c.*110. § 4. (*a*) which enacts, that it shall be lawful for any entered tanner to take out of the wooze and shave any hide or skin, or to cut and separate therefrom the thin parts: Provided, that such tanner shall give six days' previous notice in writing to the officer of excise under whose survey he shall then be, of his intention so to do, specifying the day and hour when he will take such hides or skins out of the wooze, and the number to be taken out, and whether to be taken out for being shaved, or for the thin parts to be cut off; and if any tanner shall take any hides or skins, or parts or pieces of hides or skins, out of the wooze for either of these purposes, or for any other purpose, except by shifting the same into other — Shaving hides. 56 G.3. c.110. Notice to the proper officer. Penalty on tanners removing or concealing hides from the view of the officer, 200*l.*

(*a*) This statute is general, and extends to all tanners of every description; therefore, under stat. 9 *Ann. c.*11. a *shumac* tanner was held liable to the *cumulative* penalties for concealing hides from the view of the officer. *Attorney General* v. *Kent*, E. 59 G.3. 7 *Price*, 533.

woozc, or shall remove or conceal any hide or skin, or any piece or part thereof, not being the shaving thereof, from the sight or view of the officer, so that the duties shall not be charged, he shall forfeit 200*l.*

9 Ann. c.11. Tanners to keep scales and weights.

By stat. 9 *Ann.* *c.*11. § 18. Tanners and other the said persons shall keep sufficient and just scales and weights; and sworn officers shall be appointed for the weighing and other matters to be performed at every such yard or dressing place.

Penalty for neglect.

§ 26. And if he shall not keep just scales and weights, or shall not permit his hides or skins to be weighed, or neglect or refuse to bring them to the scales, or to assist at the weighing, he shall forfeit 50*l.*

10 G.3. c.44. Using false scales.

By stat. 10 *G.*3. *c.*44. § 1. If he shall use false or insufficient scales or weights, he shall forfeit 100*l.*; but not to be prosecuted both on this and any former act: and by the 28 *G.*3. *c.*37. § 15. the same shall be forfeited, and may be seized by any officer.

26 G.3. c.77. Cheating or obstructing officers.

And by stat. 26 *G.*3. *c.*77. § 8. If in the weighing of stock he shall put any other substance therein, or shall forcibly hinder, or by any contrivance prevent such officer from taking a just account, he shall forfeit 100*l.*

9 Ann. c.11. Duty to be ascertained before removal.

By stat. 9 *Ann.* *c.*11. § 19. Tanners, and other the said persons, shall before any the said goods be removed from the place of dressing, drying, or keeping, give two days' notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market town); and shall permit the officer to weigh the goods chargeable by weight, and bring the same to the scales, and assist in weighing; and shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall ascertain the value of such goods as are to be charged *ad valorem*, by his oath, to be taken before a justice of the peace for the said officer.

Charge by the officer.

§ 20. And after the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners, or to whom they shall appoint, leaving a true copy thereof, under his hand, with such tanner or other person.

Leather to be marked.

§ 21. Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or skin, and every piece of a hide or skin, and all vellum and parchment, to be marked.

In what part to be marked.

§ 22. If such tanner or other person shall desire the mark to be made on any particular part of the hide or skin, the officer shall mark it accordingly.

Removing before marked.

§ 26. If any tanner or other such person shall remove from his yard or drying-place any the said goods before the duty shall be charged, and before they be marked; or if any buyer shall carry away the same before they be marked, he shall forfeit 50*l.*; and the said goods so unlawfully sold or removed shall also be forfeited.

9 Ann. c.11. 5 G.1. c.2. 38 G.3. c.54. Counterfeiting stamp.

By stats. 9 *Ann.* *c.*11. § 44., 5 *G.*1. *c.*2. § 9., and 38 *G.*3. *c.*54. § 10. If any person shall counterfeit the stamp, or the impression of the same, or knowingly sell any of the said goods with a counterfeit stamp or impression, he shall be guilty of felony without benefit of clergy.

By stat. 52 *G.*3. *c.*143. § 1. In all cases where any act committed in breach of any part of the laws for collecting the revenue would, by the laws in force, subject the offender to suffer death as guilty of felony without benefit of clergy, such act shall be deemed to be felony with benefit of clergy, and punishable only as such, unless declared to be felony without benefit of clergy by this act. 52 G.3. c.143.

To prevent frauds between the officers and dealers, by stat. 5 *G.*2. *c.* 2. § 10. all tanners, tawers, and dressers of hides, skins, vellum, and parchment, shall keep those which have not been stamped from those which have, and also those which have been last stamped from those which have been stamped before, for 24 hours within the bills, and for two days elsewhere: unless they shall have sooner been weighed and taken account of by the surveyor or supervisor, on pain of 10*l.* 5 G.2. c.2. Leather stamped to be kept separate.

By stat. 56 *G.*3. *c.*110. § 6. Every tanner, tawer, or dresser of hides or skins, or pieces or parts of hides or skins, shall hang up such hides, &c. which he shall take out of the wooze for that purpose, separate from all hides, &c. hung up to dry, or taken out of the wooze for that purpose, on any former day, and shall keep the same separate until the surveying officer shall have taken an account thereof, on pain of forfeiting the sum of 100*l.* 56 G.3. c.110. Hides taken out of the wooze to be hung up separate from others till an account is taken, penalty 100*l.*

And by stat. 5 *G.*3. *c.*43. § 21. No tanner, tawer, or dresser, shall remove from his yard or drying place, or from his entered store-rooms, any hides or skins, before the expiration of 24 hours from the stamping thereof, unless the same shall sooner have been weighed by the supervisor or surveyor, in order that they may have an opportunity to reweigh the same after the inferior officers; And if any additional weight shall be found, the said hides or skins, or pieces thereof, shall be charged accordingly. And if such tanner, tawer, or dresser shall remove or cause or suffer the same to be removed contrary hereunto, he shall forfeit 20*l.* 5 G.3. c.43. Hides or skins not to be removed till 24 hours after stamped.

§ 22. Every tanner, &c. shall keep scales and weights for such re-weighing, and bring the hides and skins and pieces thereof to the scales; and assist the surveyor and supervisor in re-weighing and examining from time to time the depending stock of such tanner, &c.; on pain to forfeit 50*l.*

By stat. 9 *Ann.* *c.*11. § 23. Persons within the bills of mortality shall pay off the duties in 14 days to the commissioners, and elsewhere in six weeks to the collectors, after the said goods shall be marked. 9 Ann. c.11. Payment of the duties.

§ 24. But no person shall be obliged, for payment of the duties, to go further than the next market town.

§ 25. Persons not paying as aforesaid, shall forfeit double duty; and shall not deliver out any of the said goods until the duty be paid, on pain of double value.

§ 27. Every tanner, and other such person, shall once in three months (if demanded) make an account with the officer of the goods taken out of the wooze, mill liquor, or other ingredients, and of his entries thereof, and balance the said account by the goods which have been charged, and those which are in his possession unmarked and uncharged; on pain of 50*l.* Tanners to balance accounts with the officers.

§ 36. Any two justices residing near may hear and determine offences; who shall, on information or complaint in three months after seizure made, or offence committed, summon the party accused and the witnesses, and on appearance or contempt of the Penalties how recoverable.

9 Ann. c.11. party (on proof of notice given) shall examine witnesses on oath, and give judgment, and issue warrants for levying the pecuniary penalties by distress and sale (if not redeemed in six days.)

Mitigation. § 37. They may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and so as the mitigation do not reduce the penalties to less than one fourth part, over and above the charges.

Appeal. § 36. Persons aggrieved may appeal to the next sessions, who may determine the same, and in case of conviction issue warrants for levying the penalties.

Certiorari. § 47. And no *certiorari* shall be allowed.

55 G.3. c.113. By stat. 55 *G.3. c.*113. § 12. No countervailing duty shall be paid for leather or glass employed in the construction of and composing a part of any coach, landau, chariot, landaulet, chaise, or other wheel carriage belonging to any officer of state in *Ireland*, or member of either of the two houses of parliament, imported into *G. B.* from *Ireland*, for the sole use of such officer or member, and not as merchandise or for sale.

59 G.3. c.105. No countervailing duty payable in respect of leather, &c. employed in the construction of carriages brought into G. B. or Ireland for private use.

And by stat. 59 *G.3. c.*105. § 3. After reciting the above mentioned provision, 55 *G.3. c.*113. it is enacted, that after 5th *July* 1819 no countervailing duty shall be paid in *G. B.* or *Ireland* respectively, for or in respect of the leather actually worked up and employed in the construction of and composing a part of any such coach, landau, chariot, landaulet, chaise, or other wheel carriage as aforesaid, or for or in respect of the glass actually worked up and employed in the construction of and composing a part of any such coach, landau, chariot, landaulet, chaise, or other wheel carriage which shall be so brought into *G. B.* or *Ireland* respectively by any person or persons as aforesaid.

§ IV. (10.) Linen Cloths, Silks, Cottons, and Calicoes.

[10 Ann. c.19.—1 G.1. st.2. c.36.—5 G.1. c.11.—7 G.1. st.1. c.7.—12 G.1. c.28.—9 G.2. c.4.—24 G.2. c.40.—4 G.3. c.37.—7 G.3. c.47.—13 G.3. c.56.—14 G.3. c.72.—25 G.3. c.72.—c.74.—27 G.3. c.31.—28 G.3. c.37.—43 G.3. c.69.—49 G.3. c.98.—50 G.3. c.26.—51 G.3. c.33.—55 G.3. c.30.—59 G.3. c.32.—c.52.—c.90.—3 G.4. c.27.—c.32.]

43 G.3. c.69. Former duties repealed. By stat. 43 *G.3. c.*69. § 1. All former duties are repealed: and in lieu thereof other duties are imposed upon all goods, which shall be printed, stained, painted, or dyed in *G. B. Sch.* (A.) And by stat. 50 *G.3. c.*26. Certain export duties are imposed.

New duties. The said duties to be paid by the printer, stainer, painter, or dyer thereof.

59 G.3. c.52. And by stat. 59 *G.3. c.*52. Certain duties of customs are imposed upon *French* linens (or lawns).

43 G.3. c.69. Licence. And by stat. 43 *G.3. c.*69. *Sched.* (A.) Every calico printer, and every printer, painter, or stainer of linens, cottons, or stuffs, shall pay annually for a licence 10*l.*

55 G.3. c.30. And by stat. 55 *G.3. c.*30., 10*l.* in addition, which latter duty was limited to 5th *April* 1819; but by stat. 3 *G.4. c.*27. is continued until 5th *July* 1826.

7 G.3. c.47. Ribbands and silks. And by stat. 7 *G.3. c.*47. § 6. All ribbands and silks printed, stained, or painted in *G. B.*, though less than half a yard in

breadth, are within the meaning of stat. 12 *An. c*.9. and stat. 6 *G*.1. *c*.4. liable to the said duties, according to the proportions in which such ribbands and silks are made. 7 G.3. c.47.

Observations as to calicoes.

But it is to be observed that such painted or stained calicoes cannot be used for wearing apparel, and therefore the printing or staining of them must be chiefly in order for exportation; for by stat. 7 *G*.1. *st*.1. *c*.7. § 1. it is enacted, that no person shall use or wear in any apparel any printed, painted, stained, or dyed calico, on pain of 5*l*. to the informer, on conviction on the oath of one witness before one justice; who shall on information on oath in six days after the offence summon the party, and upon his appearance or contempt examine the matter, and on proof by confession or oath of one witness determine the same, and on conviction cause the penalty by warrant to be levied by distress and sale, rendering the overplus (charges of distress and sale being first deducted): provided that persons aggrieved may appeal to the next quarter sessions, giving six days' notice, and the sessions shall hear and determine the same, and their judgment be final.

7 G.1. st.1. c.7. Prohibition of calicoes.

§ 2. 4. And if any person shall offer the same to sale, or any household furniture made up of or mixed therewith, unless for exportation, he shall forfeit 20*l*., half to the informer, and half to the poor of the parish or place where the offence shall be committed, to be recovered in the courts at *Westminster*, with full costs, on prosecution in six months; and if he is a steward or other officer of a corporation, he shall also forfeit his office.

Penalty on selling them;

§ 3. No person shall use the same in any household furniture on like pain of 20*l*.

or using them in furniture.

§ 11. But this shall not extend to calicoes dyed all blue.

Exceptions.

§ 10. But the same shall extend to stuff made of cotton, or mixed therewith, printed or painted; and to calico chequered or striped; and to calico stitched or flowered in foreign parts with any colour or with coloured flowers made there, (muslins, neckcloths, and fustians excepted).

But by stat. 9 *G*.2. *c* 4. It shall be lawful to use stuff made of linen yarn and cotton wool manufactured and printed or painted in *G. B.*, provided the warp thereof be entirely linen yarn. 9 G.2. c.4.

By stat. 14 *G*.3. *c*.72. § 1, 2. Whereas doubts have arisen whether stuffs wholly made of cotton spun within this kingdom ought not to be considered as *calicoes*, and as such be liable to the like duties, penalties, and prohibitions, it is enacted that no greater duty shall be paid for the same than 3*d*. a yard (and by 43 *G*.3. *c*.69. *Sch*. (A) than 3½*d*. a yard), and that any person may use the same in apparel or otherwise.

14 G.3. c.72. Observations as to cottons.

§ 3. And in every piece thereof shall be woven in the warp in both selvedges three blue stripes, each stripe of one thread only; the first of which stripes shall be the first or outermost thread, the second of the said stripes shall be the third thread, and the third of the said stripes shall be the fifth thread, and each piece shall be stamped at each end with a stamp to be provided by the officers of excise; and instead of the word *calico*, which stands for foreign calicoes, each piece shall be marked with the words *British manufactory*.

To have three blue stripes in the edge.

14 G.3. c.72. Selling without such mark. § 4. If any person shall expose to sale any stuffs wholly made of cotton, and printed, painted, stained, or dyed (muslins, neckcloths, and fustians excepted), wherein such mark shall not be woven; he shall forfeit the same, and 50*l.* for each piece.

Exception. § 5. Provided always, that nothing in this act shall extend to cotton velvets, velverets, or other fustians not manufactured in *G. B.*

Counterfeiting stamps. § 8. 10. If any person shall counterfeit such stamp, or knowingly sell any such stuffs with a counterfeit stamp; he shall be guilty of felony, without benefit of clergy (*a*).

Importing calicoes so marked. § 9. If any person shall import any calicoes, muslins, or other goods or stuffs made of linen yarn only, or of linen yarn and cotton wool mixed, or wholly of cotton wool, wherein shall be wove in the selvedge any such blue stripe; he shall forfeit the same, and 10*l.* for each piece.

May be searched for. § 11. And upon oath made by any person that he hath reason to suspect that any printed, painted, stained, or dyed stuffs, wholly made of cotton, for which a duty ought to have been paid, are in the custody or possession of any draper or of any other person for his use, without having thereupon such stamps or marks as aforesaid, two commissioners within the bills, and two justices elsewhere, shall issue their warrant to any officer of the said duties, with the assistance of a constable in the day-time, to search for the same, and to open doors, trunks, chests, and packages, and to seize such goods, and bring them to the next office for the said duties.

§ 12. One moiety of the penalties and forfeitures in this act shall be to the king, and the other moiety to him who shall sue.

Proof to lie on the owner. § 14. And if any question shall arise, whether any of the said stuffs wholly made of cotton were manufactured in *G. B.*, the proof shall lie on the owner and not on the prosecutor.

51 G.3. c.33. But by stat. 51 *G.3. c.*33. The provisions in stat. 14 *G.3. c.*72. for weaving the three blue stripes, and the penalties relating to the same; and the provisions of stat. 25 *G.3. c.*72. relating to the same subject, are respectively repealed.

10 Ann. c.19. 25 G.3. c.72. Entry of name and house. By stats. 10 *Ann. c.*19. § 71. and 25 *G.3. c.*72. § 7. Every such printer, painter, stainer, or dyer shall give notice in writing at the next office of his name and place of abode, and where he intends to work; on pain of 50*l.*

1 G.1. st.2. c.36. And by stat. 1 *G.*1. *st.*2. *c.*36. § 21. Where any person shall take upon him to print, paint, stain, or dye any silks, calicoes, linens, or stuffs at any other place than the place of his usual residence or exercise of his trade, he shall first make entry of such silks, &c. with the officer of the division where he intends so to do, and pay down the duties, on pain of 50*l.* and also of seizure and forfeiture of the said goods.

10 Ann. c.19. Officers to enter and take account. By stat. 10 *Ann. c.*19. § 75. Every officer shall at all times by day or night, and if by night in presence of a constable, be permitted on request to enter such person's house, workhouse, drying place, warehouse, field, or other place used by him, and take an account, and shall make thereof a report in writing to the commissioners or to whom they shall appoint, leaving a copy, if de-

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(*a*) Vide stat. 52 G.3. c.143. § 1. *ante* p. 41.

manded, under his hand; and if he shall make default in leaving such copy (after demand in writing, 12 *G*.1. *c*.28. § 30.) he shall forfeit 40*s*. 10 Ann. c.19. 12 G.1. c.28.

And by stat. 10 *Ann. c*.19. § 78. and 25 *G*.3. *c*.72. § 8. None of the said persons shall obstruct the officer in execution of his duty; on pain of 200*l*. Obstructing the officer.

By stat. 10 *Ann. c*.19. § 72. Every such printer and other person shall once in six weeks make entry in writing at the next office, on oath before the collector or supervisor, of all such goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50*l*. 10 Ann. c.19. Entry of goods made.

§ 73. But no person shall be obliged to go to make entry further than the next market town.

§ 77. If the officer shall miss any quantity of the said goods, whereof he had taken an account in his last survey, and shall not on reasonable demand receive satisfaction what is become of the same; the officer may charge such person with the duties of the goods so missing, as if they were printed, painted, stained, or dyed. Officer may charge for goods missing.

And by stat. 25 *G*.3. *c*.72. § 9. No printer shall begin to print, stain, paint, or dye any of the goods aforesaid before they shall have been measured and marked at both ends by the officer with a frame mark, denoting the measure; on pain of forfeiting the same, and also 20*l*. for every piece by him in whose possession they shall be found. 25 G.3. c.72. Pieces to be marked before printing, &c.

§ 11. If any printer, &c. shall wilfully cut out or deface such frame mark, he shall forfeit 50*l*. Defacing frame marks.

By stats. 10 *Ann. c*.19. § 82. and 25 *G*.3. *c*.72. § 13. If he shall conceal any of the said goods, before printed, &c. to avoid duty, he shall forfeit 50*l*. And all the silks, calicoes, linens, and stuffs found in any private workhouse, or other place whereof no notice hath been given, or the value thereof, shall be forfeited. 10 Ann. c.19. 25 G.3. c.72. Goods concealed.

By stat. 25 *G*.3. *c*.72. § 14. No printer, &c. shall keep any such goods, marked or unmarked, in any room or place whereof no notice shall have been given as aforesaid; on pain of forfeiting 50*l*. and also such goods, which may be seized by any officer. 25 G.3. c.72. Keeping goods in un-entered places.

By stat. 10 *Ann. c*.19. § 74. He shall within six weeks after entry clear off the duties, on pain of forfeiting double: and if they shall deliver out any such goods, after default in payment of the duties, before the same shall be cleared off, they shall forfeit double value of the goods. 10 Ann. c.19. Payment of the duties.

By stat. 59 *G*.3. *c* 90. § 11. Every person who shall print, paint, stain, or dye any silks, muslin, calicoes, linen, or stuffs, in *G.B.*, shall by or at the end of every six weeks clear off and pay all the duties which shall, during such six weeks, have been charged upon such person or persons respectively, or shall then remain unpaid, for all such silks, muslin, calicoes, linens, and stuffs respectively as shall have been printed, painted, stained, or dyed by him, her, or them respectively, upon pain of forfeiting, for every default therein, double the sum of the said duties whereof the payment shall be so neglected; and no such person, after making default of such payment, shall deliver or carry out, or cause to be delivered or carried out, any such printed, painted, stained, or dyed goods, until he has paid and cleared off the whole of such duties, upon 59 G.3. c.90. Persons printing, &c. silks, &c. shall clear the duties every six weeks. Penalty. Delivering without clearing duties.

59 G.3. c.90. pain of forfeiting double the value of the goods so delivered or carried out.

10 Ann. c.19. 25 G.3. c.72. Removing before stamped. By stats. 10 *Ann. c.*19. § 79. and 25 *G.*3. *c.*72. § 10. No person who shall print, &c. shall remove any the said goods until the officer hath taken an account thereof, and until each piece be stamped or marked at both ends thereof; on pain of 50*l.* And the same so carried away without being marked, and *found* in the possession of any draper or other person for his use for sale, may be seized or the value thereof recovered.

The *Attorney General* v. *Delano*, *H.* 59 *G.*3. 6 *Price*, 383.— On an information for penalties under stat. 11 & 12 *W.*3. *c.*10. § 2. for having prohibited silk goods *found* in defendant's possession, the only evidence being that the articles were *seen* by the witnesses (not officers) in his possession; the Court of Exchequer held that it was sufficient evidence of FINDING upon him to fix him with the penalty under this statute. It seems that the word "*finding*," being used in the act distinct from "*seizing*," means "*discovered*," in the possession of the party charged. (*a*)

Goods not surveyed to be kept separate. By stats. 10 *Ann. c.*19. § 81. and 25 *G.*3. *c.*72. § 12—24. Every printer, painter, stainer, or dyer, shall keep the silks, calicoes, linens, and stuffs, which have not been taken account of by the officer, separate from those which have; on pain to forfeit for each offence, by the former act 5*l.*, by the latter 50*l.*

Search for goods unstamped. And by stats. 10 *Ann. c.*19. § 98. and 25 *G.*3. *c.*72. § 18. On oath by any credible person that he hath reason to suspect that any of the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale unstamped; the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day-time to search for the same, and to open doors, chests, trunks, and packages, and to seize such goods, and bring them to the next office, and such commodities so found shall be forfeited.

5 G.1. c.11. 27 G.3. c.31. Goods found unstamped may be seized. By stat. 5 *G.*1. *c.*11. § 15. and 27 *G.*3. *c.*31. § 16. If any of the said goods shall be found in any place on land or water (except on ship-board for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged, the same shall be forfeited, and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 100*l.*

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11 & 12 W.3. c.10. (*a*) Stat. 11 & 12 W.3. c.10. § 2. enacts, that certain silks of foreign manufacture, which shall be imported into this kingdom, shall be put into such warehouses as shall be approved by the commissioners of the customs, "so as none of them shall be taken and carried out thence, upon any account whatsoever, other than in order for exportation, and not until sufficient security be first given" to the king, that the same shall be exported, and not re-landed; and that all such goods "*which shall be found in any house, shop, or warehouse, or other place whatsoever,*" (other than in such warehouses as shall be approved, &c. "*shall be forfeited, and subject and liable to be searched for and seized,*" (in like manner as by 14 Car.2. c.11.) and that all such goods so forfeited, &c. shall be sold at the next custom-house for exportation.

The same section als provides, that "*over and above the loss of the said goods, the person or persons, in whose custody, knowing thereof, the same shall be found or seized, or that shall sell or dispose thereof, &c. shall forfeit and lose the sum of 200l.,*" *&c.*

And by stat. 25 *G*.3. *c*.72. § 19. All stuffs wholly made of cotton wool commonly called *calicoes*, that shall not have three blue threads in each selvedge as directed by 14 *G*.3. *c*.72., shall be deemed *foreign calicoes*, and on their being printed or dyed as aforesaid, shall be marked at both ends of every piece or remnant with the words "foreign calicoes for exportation;" and every draper or dealer who shall have in his custody any such goods (except dyed throughout of one colour), or any stuffs wholly made of cotton wool wove in *G B*., commonly called *British manufactory* (muslins, neckcloths, and fustians excepted), not having such blue threads, shall forfeit 200*l*. and also every such piece found in his custody. See 51 *G*.3. *c*.33. *ante*, p. 194. 25 G.3. c.72. Calicoes, &c. to have three blue threads in the selvedge.

§ 20. The owner or printer of any piece or remnant of *cossae* or foreign *muslins* and *calicoes* shall, before they are presented to the officer, mark the same at both ends with a frame mark, containing in words at length his name and place of abode, and also the name such goods are commonly known by (except those dyed throughout of one colour), on pain of forfeiting the said goods, and 10*l*. for every piece or remnant. To be marked before printing with a frame mark.

§ 21. The owner or printer of any piece or remnant of linens or stuffs made of cotton mixed, or wholly made of cotton wool wove in *G. B*., called *British manufactory* or *muslins*, plain, checquered, striped, figured, or ornamented (except fustians, velvets, velverets, dimities, and other figured stuffs), shall mark the same at both ends with a frame mark, containing in words at length his name and place of abode, and the name and quality of such goods, with the ready money price thereof, before the same is presented to the officer in order to be printed, stained, painted, or dyed: And if the owner is not the printer, &c., then he shall deliver a note with such goods, expressing the number of pieces, &c. their quality and value, and the time when delivered to the printer, &c.; which note shall be delivered by him to the officer before the same are printed, &c. (except those dyed of one colour as aforesaid,) on pain that every such piece, &c. not so marked shall be forfeited, and may be seized by any officer; and the owner, or person putting out the same, shall forfeit 20*l*. And if such person shall mark any such piece at a less price than the real value as aforesaid, he shall forfeit the same which may be seized as aforesaid, and also 20*l*. Name of the owner or printer and value of the goods to be marked.

§ 22. If the frame mark shall be obliterated or defaced, the printer shall give notice thereof to the officer, who shall renew the same. Frame marks being defaced.

By § 23. and stat. 27 *G*.3. *c*.31. § 22. If any person shall counterfeit or forge any frame mark, to denote the measure, he shall forfeit 100*l*. Counterfeiting the frame mark.

§ 17. If any person shall counterfeit the stamp, he shall be guilty of felony without benefit of clergy. *Vide* 52 *G*.3. *c*.143. *ante*, *p*.41. Counterfeiting the stamps.

By stats. 10 *Ann*. *c*.19. § 97. 13 *G*.3. *c*.56. and 25 *G*.3. *c*.72. § 17. If any person shall knowingly sell any of the said goods with a counterfeit stamp, he shall forfeit 100*l*., and be set in the pillory (*a*) in some public place two hours.

Moreover by stat. 27 *G*.3. *c*.31. § 14. If any person shall knowingly sell any of the said goods with such counterfeit stamp, with

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(*a*) Abolished in this case by stat. 56 G.3. *c*.138. See title "Pillory." Vol. III.

25 G.3. c.72. intent to defraud his majesty, he shall be guilty of felony without benefit of clergy.

25 G.3. c.72. c.74. Exportation. By stats. 25 *G.*3. *c.*72. § 27, 28, 29, 30. and 25 *G.*3. *c.*74. § 17, 19, 20, 21. Every person who hath paid the duties, or bought such goods of any person who hath paid the duties, may export the same, and shall be allowed all the duties in drawback, as set forth in 43 *G.*3. *c.*69. *sched.* (C) on conforming to the following conditions, (viz.) The person intending to export such goods shall give 12 hours' notice in writing, if within the limits of the chief office, (elsewhere 24 hours,) of his intention to pack up the same, and of the time and place, to the officer appointed for that purpose, who shall measure the said goods, and see that the stamps and frame marks be taken off; and every piece shall be packed up in the presence of such officer, and shall be sealed and marked as the commissioners shall direct; and if any person shall open such package, or deface such seal or mark, (except the officer at the port of exportation,) he shall forfeit 20*l.* And the officer who saw the same packed up shall take an account of the kinds and qualities thereof, and make a return to the officer who shall be appointed to receive the said goods at the port of exportation. And such person shall also give six hours' notice in writing to such officer of the time and place of shipping the same; and shall give bond that such goods shall not be unshipped or re-landed, or put into any other vessel (unavoidable accident excepted). And if any person shall unship or re-land, or put into any other ship (except as aforesaid) any such goods, the same shall be forfeited over and above the penalty of such bond.

25 G.3. c.74. By stat. 25 *G.*3. *c.*74. § 18. If such person shall not begin to pack such goods within one hour after the time mentioned in such notice, the same shall be void, and he shall be obliged to give a fresh notice.

§ 22, 23. But nothing herein shall extend to authorise the exportation of any goods, other than such as might have been exported before, nor to alter the manner thereof, except as aforesaid.

4 G.3. c.37. Regulations concerning cambricks and lawns made in England. By stat. 4 *G.*3. *c.*37. § 17, 18. (which establishes the corporation of the *English* linen company for making cambricks and lawns) it is enacted that the commissioners of excise, where there shall be a manufactory of cambricks or lawns, or of goods known under that denomination, shall appoint the supervisor or other officer to seal the same; for which they shall have such fee as the commissioners shall appoint.

§ 19. The manufacturer to give notice in writing to the officer of the finishing of every piece, before it is taken out of the loom, who shall seal the same at both ends; on pain that such manufacturer, taking the same out of the loom without having given such notice, and having the same sealed as aforesaid, shall forfeit 5*l.*; and every such piece shall be forfeited, and may be seized by any officer of the customs or excise.

§ 20. And the officer with convenient speed, after notice, shall mark and also number each piece, before it is taken out of the loom; and make entry in writing in books to be provided at the expence of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp; on pain of 10*l.*

§ 21. If the officer shall mark any not made in *England* or *Wales*, or after the same has been taken out of the looms, he shall forfeit 50*l.* for each piece to him who shall sue, and lose his office, and be incapacitated to hold any other office of trust under the crown. 4 G.3. c.37.

§ 22. If any person shall offer to the officer any bribe to fix the mark to any pieces not so made, he shall forfeit 50*l.*; and if he shall by bribery or otherwise prevail upon the officer to commit such offence, he shall forfeit 100*l.* and stand in the pillory (*a*) two hours.

§ 23. And the officer shall yearly, in the month of *June*, transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made, on pain of dismission; and he, or his executors, shall deliver up the seals, on demand from the commissioners, on pain of 200*l.*

§ 24. Cambricks and lawns made in *England* found unstamped shall be forfeited, and may be seized by any officer of the customs or excise; and after condemnation shall be sold: And every person who shall sell or expose to sale, or have in his custody for that purpose, any cambricks or lawns made in *England*, unmarked, shall forfeit 200*l.*

§ 25. But the said goods so seized, condemned, and sold, shall not be worn in this kingdom, but exported, and not be sold but upon condition of exportation; and shall not be delivered out of the warehouse until bond be given, to the satisfaction of the collector, in double penalty of the goods, that the same shall be exported, and not re-landed.

§ 26. To counterfeit the seal appointed by this act; or import any foreign cambricks or lawns having such counterfeit mark thereon; or expose the same to sale knowing the stamp thereon to be counterfeited, is felony without benefit of clergy. See stat. 52 *G.*3. *c.*143. *ante*, p. 41.

§ 28. All goods condemned in pursuance of this act, and all pecuniary forfeitures (not herein otherwise directed), shall be sued for and recovered in any of his majesty's courts of record at *Westminster*, in the name of the attorney general or of such officer as aforesaid; and be applied (after all charges deducted) half to the use of the king, and half to the officer or other person who, pursuant to the directions of this act, shall seize, inform, or sue.

§ 31. And if any question shall arise, where the goods were manufactured, the proof shall lie on the owner or claimer, and not on the officer.

By stats. 10 *Ann.* *c.*19. § 92. 24 *G.*2. *c.*40. § 29. and 25 *G.*3. *c.*72. § 33, 34., the penalties (except as is above mentioned in relation to calicoes) may be sued for, levied, and mitigated as by the laws of excise (*b*), or in the courts at *Westminster*; and shall be employed half to the king, and half to him that shall discover, inform, or sue. Power of the justices.

And by stats. 10 *Ann.* *c.*19. § 83. 25 *G.*3. *c.*72. § 15. and 28 *G.*3. *c.*37. § 21. all the utensils and instruments for printing, painting, staining, or dying such goods, in custody of any the said persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the same, in like manner as if such person were the lawful owner. Utensils liable.

(*a*) See *ante*, p. 197. n. (*a*). (*b*) For which see *ante*, Sect. II. (*b*). p. 58.

IV. (11.) Malt. (a)

[2 & 3 Ed. 6. c. 10. — 12 Ann. st. 1. c. 2. — 1 G. 1. st. 2. c. 2. — 6 G. 1. c. 21. — 9 G. 1. c. 3. — 12 G. 1. c. 4. — c. 28. — 1 G. 2. st. 2. c. 16. — 2 G. 2. c. 1. — 3 G. 2. c. 7. — 24 G. 2. c. 40. — 33 G. 2. c. 7. — 1 G. 3. c. 3. — 3 G. 3. c. 13. — 23 G. 3. c. 64. — 24 G. 3. sess. 2. c. 41. — 28 G. 3. c. 37. — 33 G. 3. c. 7. — 42 G. 3. c. 38. — 43 G. 3. c. 69. — c. 81. — 44 G. 3. c. 16. — 46 G. 3. c. 139. — 47 G. 3. st. 2. c. 37. — 48 G. 3. c. 36. — c. 74. — 50 G. 3. c. 1. — 52 G. 3. c. 128. — 53 G. 3. c. 9. — 53 G. 3. c. 103. — 55 G. 3. c. 30. — 59 G. 3. c. 3. — 59 G. 3. c. 53. — 3 G. 4. c. 18. — c. 27.]

No malt to be imported.

By stat. 12 *Ann. st.* 1. *c.* 2. § 26. No malt shall be imported, on pain of forfeiting the same, and the value thereof.

Duties.

By stat. 59 *G.* 3. *c.* 53. Additional duties are likewise imposed.

Licence.

By stat. 24 *G.* 3. *sess.* 2. *c.* 41. § 1. 6. 7. and by 43 *G.* 3. *c.* 69. Every maltster or maker of malt for sale shall take out a licence from the office of excise annually, and pay for the same 5*s.*, if the quantity of malt made by him within the year ending 5th *July* in each year previous to taking out the licence shall not exceed 50 quarters, and by stat. 55 *G.* 3. *c.* 30. the sum of 2*s.* 6*d.* is added to the former duty.

		By 43 G. 3. c. 69. £.	s.	d.	By 55 G. 3. c. 30. £.	s.	d.
If above 50 and under 100	-	0	10	0	0	5	0
If above 100 and under 150	-	0	15	0	0	7	6
If above 150 and under 200	-	1	0	0	0	10	0
If above 200 and under 250	-	1	5	0	0	12	6
If above 250 and under 300	-	1	10	0	0	15	0
If above 300 and under 350	-	1	15	0	0	17	6
If above 350 and under 400	-	2	0	0	1	0	0
If above 400 and under 450	-	2	5	0	1	2	6
If above 450 and under 500	-	2	10	0	1	5	0
If above 500 and under 550	-	2	15	0	1	7	6
If above 550 -	-	3	0	0	1	10	0
		and a surcharge.					

43 G. 3. c. 69.
55 G. 3. c. 30.

And by stats. 43 *G.* 3. *c.* 69. and 55 *G.* 3. *c.* 30. Every person who shall first become a maltster or maker of malt shall pay for every such licence 7*s.* 6*d.*, and within 10 days after the 5th of *July* next after taking out such licence, such further additional sum as, with the said 7*s.* 6*d.* shall amount to the duty herein charged, according to the quantity of malt made by him within the preceding year. (*b*)

24 G. 3. sess. 2. c. 41.

By stat. 24 *G.* 3. *sess.* 2. *c.* 41. § 7. If any maltster or maker of malt for sale shall neglect to take out such licence and renew the same annually, ten days at least before the end of the year, he shall forfeit 10*l.*

(*a*) N.B. The duties by 43 G. 3. *c.* 69. are granted without limitation of time. Those by 55 *G.* 3. *c.* 30. were limited to the 5th *April* 1819, but are continued by stat. 3 *G.* 4. c. 27. until 5th *July* 1826.

(*b*) For countervailing duties, the collection and payment thereof, and drawbacks on malt, beer, and spirits imported and exported between *G.B.* and *Ireland*, see stats. 3 *G.* 4. *c.* 31. and 3 *G.* 4. *c.* 94.

For the duty on malt made from bear or bigg only, in *Scotland*, see stat. 3 *G.* 4. *c.* 30.

§ 8. But persons in partnership need only take out one licence for one house. 24 G.3. sess 2. c.41.

By stat. 53 *G*.3. *c*.103. Upon the death of any person licensed, or upon the removal of any person from the house or premises in which his licence shall authorise him to make or manufacture, deal in, vend, or sell, any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorise the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted. 53 G.3. c.103. Executors &c. may be authorized to carry on the trade till licence expires.

The said duties shall be under the management of the commissioners and officers of excise. 43 *G*.3. *c*.69. § 3.—*c*.81. § 2. 59 *G*.3. *c*.53. § 4. Officers for these duties.

By stat. 12 *Ann*. *st*. 1. *c*.2. § 36. No person making malt (other than compounders) shall set up, alter, or use any cistern, uting vat, utensil, or other vessel, for the wetting or steeping barley or other corn, or any kiln, floor, room, or other place for making or keeping of malt, without first giving notice in writing at the next office of excise; or shall keep or use any private cistern or other vessel for the wetting his barley or corn, other than such as are known and made use of in his common malting-house; on pain of 50*l*. 12 Ann. st. 1. c.2. Places of making to be entered.

And in order that it may be ascertained when such corn is begun to be wetted or steeped, and to prevent frauds in mixing corn with corn steeping, by stat. 3 *G*.3. *c*.13. § 1. Every maltster, within a city or its suburbs or market town, shall give 24 hours' (elsewhere 48 hours') notice in writing to the officer of the hour or time of the day when he intends to wet corn or grain to be made into malt: and if he shall not begin and immediately after proceed to cover the whole thereof with water at the time mentioned in the notice, or within three hours after, the notice shall be void; and he shall be obliged to give a fresh notice before he shall begin. And if he shall not give such notice, or having given notice which shall become void, shall not give a fresh notice; or having begun to wet such corn, shall not immediately proceed to cover the whole with water, and continue the same covered for 40 hours [but see 42 *G*.3. *c*.38. § 32. *post*]; or after the officer hath taken account of the corn steeping, shall add any fresh corn or grain; he shall, for every such offence respectively, forfeit 100*l*. See also stat. 48 *G*.3. *c*.74. § 2. (*post*. p. 213.) Notice to be given of beginning to wet. The corn to continue covered with water for 40 hours.

By stat. 42 *G*.3. *c*.38. § 28. No maltster shall begin to wet or steep any corn or grain to be made into malt at any other time than between 8 in the morning and 2 in the afternoon, nor shall he empty any corn or grain out of the cistern, uting vat, or other vessel or utensil used for such wetting or steeping, at any other time than between 7 in the morning and 4 in the afternoon, on pain of 100*l*. for each offence. 42 G.3. c.38. Hours when to begin to wet. Penalty 100*l*.

§ 29. And out of every twenty bushels of malt, gauged and charged upon the floor, after the same shall have been taken out of the cistern, &c. by the space of 26 hours or more, and before it shall be dried upon the kiln, shall be allowed 10 bushels, and so in proportion for any greater or less quantity. Allowance on wetting.

By stat. 12 *Ann*. *st*.1. *c*.2. § 7. Every round bushel with a plain 12 Ann. st.1. c.2.

Bushel, what.

bottom 18½ inches wide throughout, and 8 inches deep, shall be deemed a legal *Winchester bushel.*

33 G.2. c.7.

But by stat. 33 *G.*2. *c.*7. § 70. If any maltster shall not wet or steep his barley or other corn, in the cistern, uting vat, or other vessel, so as the same be covered with water, and continue so covered for 40 hours before he take or drain the water from it, he shall not be entitled to the said allowance. (See *post.* 42 *G.*3. *c.*38. § 32. p. 202, 203.)

48 G.3. c.74. Grain making into malt not to be watered until 12 days afterwards.

By stat. 48 *G.*3. *c.*74. § 13. No maltster or maker shall wet, water, or sprinkle, or suffer, &c. any corn or grain making into malt in any state or stage of operation after the same shall have been emptied out of the cistern, &c. used for steeping, until the full end and expiration of 12 days or 288 hours, on pain of 200*l.*

42 G.3. c.38. Penalty on maltster wetting malt after taken from the kiln, 100*l.*

By stat. 42 *G.*3. *c.*38. § 31. If any maltster or maker of malt shall wet, water, sprinkle, or damp, or permit or cause to be wetted, &c. any malt after the same shall have been taken off the kiln, and before it shall be delivered into the custody of the brewer or other person who may have purchased or agreed for the same, except in the ordinary process of brewing beer from such malt; he shall forfeit for every such offence 100*l.*

48 G.3. c.74. Penalty on workmen wetting corn contrary hereto.

And by stat. 48 *G.*3. *c.*74. § 14. If any workman, servant, labourer, or other person employed by or in the service of any maltster, &c. shall wet, water, or sprinkle any corn or grain making into malt in any state or stage of operation whatever, after the same shall have been emptied, thrown, or taken from or out of the cistern, uting vat, or other vessel or utensil used for steeping such corn or grain, until the full end and expiration of 12 days or 288 hours after the same shall have been emptied, thrown, or taken from or out of any such cistern, &c. used for steeping, &c. as aforesaid, every such workman, &c. so offending shall be apprehended by any officer of excise, and taken before any one justice of the peace for the county, riding, division, city, or liberty respectively, wherein such workman, &c. shall be found; and any such justice on the party's confession or on proof by one witness may convict in the penalty of fifty pounds every such workman, &c. so proved to have been guilty of any such offence; and every such workman, &c. shall immediately on such conviction pay down into the hands of such officer the said penalty in which he shall be so convicted, to be applied in manner hereinafter directed; and if any such workman, &c. shall not forthwith pay down the said penalty, the said justice shall, by warrant under his hand and seal, commit him to the house of correction for the said county, &c., there to be kept to hard labour for not exceeding twelve months, to be reckoned from the day of such conviction; and he shal, not be discharged until he shall have paid the said penalty, or until the expiration of the time for which such commitment was made.

42 G.3. c.38. Maltster may drain water from grain steeping before 40 hours after first wetted. Provided, &c.

But by stat. 42 *G.*3. *c.*38. § 32. It shall be lawful for any maltster or maker of malt to drain the water from any corn or grain, whilst steeping in any cistern or other vessel, before the expiration of forty hours from the time such corn and grain was first wetted and completely covered with water: Provided, that no such water shall be so drained within such time unless the maltster or maker so draining the same shall in their last preceding entry or notice in writing

for the making of malt, at the next office of excise, have stated his intention so to drain off such water, with the exact hour and time, between 8 in the morning and 4 in the afternoon, when such water is so to be drained, nor unless such water shall be drained between the said hours: nor more than once during the said space of forty hours, and that such corn or grain be again completely covered with water within one hour from the time of beginning so to drain. 42 G.3. c.38.

§ 33. If any workman servant, or labourer in the service of any maltster or maker of malt shall begin to wet or steep any corn or grain at any other time than between 8 in the morning and 2 in the afternoon, or shall at any other time than between 7 in the morning and 4 in the afternoon remove any corn or grain from any cistern or other vessel in which the same shall have been wetted or steeped, or shall wet, water, or sprinkle any corn or grain making into malt, in any state or stage of operation after the same shall have been emptied out of the cistern or other vessel used for steeping until the expiration of 12 days after the same shall have been so emptied, and before the same shall be put or laid on the kiln, every such workman, &c. so offending in any or either of the particulars aforesaid may be apprehended by any officer of excise, and taken before one justice for the county or division wherein such workman, &c. shall be found; and such justice on the party's confession, or proof by oath of one credible witness, may convict the offender in the penalty of 50*l.*; and every such workman, &c. so convicted shall immediately on such conviction pay down into the hands of such officer such penalty; in failure whereof such justice may commit the party so convicted to the house of correction, there to remain to be kept to hard labour for (not exceeding) 12 months, to be reckoned from the day of conviction; and the offender shall not be discharged until he shall have paid the said penalty, or until the expiration of such time of commitment. See also stat. 48 *G.*3. *c.*74. § 14. (*ante*, p. 202.)

Servants of maltsters beginning to wet or remove grain, &c. contrary to this act, may be fined 50*l.* by any justice, who may commit him for non-payment.

By stat. 12 *An. st.*1. *c.*2. § 4. The officer was empowered to enter, *on request*, the house, &c. of any maker of malt, either for sale or not for sale, and gauge all cisterns, &c., and directed to leave a copy of his account of the quantity with the maltster, who was liable to a penalty of 20*l.* for obstructing him; and by § 34. the officer on request was permitted by night or by day, *but if in the night*, in the presence of a constable, to enter the house, &c. of any maker of malt *for sale*, common brewer, innkeeper, victualler, distiller, or vinegar maker making malt, to gauge and take an account of the corn wetting or wetted, and such maker refusing to permit him forfeited 20*l.* And by a general clause in stat. 1 *G.*1. *st.*2. *c.*2. any maker of malt obstructing an officer of excise was liable to a penalty of 10*l.*

12 Ann. st. 1. c. 2. Right of entry by excise officers.

1 G. 1. st. 2. c. 2.

But by stat 42 *G.*3. *c.*38. § 34. It shall be lawful for any officer of excise, as well by night as by day, to enter every malt house or other place used by any maltster or maker of malt for the making or keeping of malt or corn for the making of malt, and to examine, gauge, measure, and take account of all corn or grain therein; and if any such maltster or maker of malt shall refuse to permit such officer to enter such place, or if he or any other person shall hinder, impede, or disturb any officer in the execution of his authority relating to the duty on malt, every such maltster or maker

42 G.3. c.38. Excise officer may at all times enter and survey.

Penalty for obstructing them, 200*l.*

42 G.3. c.38. of malt, or other person, shall for every such offence forfeit 200*l.* See stat. 48 *G.*3. *c.*74. § 24. (*post.*)

§ 31. And if the officer shall refuse or neglect (after demand in writing, 12 *G.*1. *c.*28. § 30.) to leave a copy of the gauge for the maker at the time of taking the gauge; he shall forfeit 40*s.*

Manner of gauging.

By stat. 12 *An. st.*1. *c.*2. § 17. The officer shall measure corn making into malt by the gauge only, and not by the bushel.

2&3 Ed.6. c.10. Time for making.

By stat 2&3 *Ed.*6. *c.*10. § 2. No person shall make any barley malt (except in *June, July,* and *August*), but that the same shall have in making thereof, that is, in the vat floor steeping and drying three weeks at least, nor in *June, July,* and *August,* but that it shall have 17 days at the least (unless it be for his own house); on pain of forfeiting for every quarter 2s. half to the king and half to him that shall sue: And the justices in sessions, and the stewart in the leet, may hear and determine the same, as well by presentment of 12 men, as by accusation or information of two honest witnesses.

Dressing of malt.

§ 3. If any person shall put to sale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more, he shall forfeit for every quarter 20*d.* half to the king and half to him that shall sue in like manner in the sessions or leet.

Mixing bad malt with good.

§ 2. 5. No person (except it be for his own house) shall mingle any malt, not well made, or made of mow-burnt or spired barley with other good malt, and after put the same to sale; on pain to forfeit for every quarter 2*s.*, half to the king and half to him that shall sue, in like manner in the sessions or leet.

§ 4. The bailiffs and constables of the town where malt shall be made, or put to sale, may search the same: And if they shall find it to be evil made or mingled with evil malt, they shall with the advice of one justice, cause it to be sold to such persons, and at such reasonable prices, and under the common price of the market, as to him shall seem necessary and expedient.

48 G.3. c.74. Penalty for forcing together in the cistern, &c. corn making into malt.

And by stat. 48 *G.*3. *c.*74. § 19. If any maltster or maker of malt shall tread, ram, or otherwise force together in the cistern, uting vat, or couch, any corn or grain steeping or steeped in order to the making thereof into malt, every such maltster, &c. shall forfeit 100*l.*; and if any corn or grain in any cistern, uting vat, or couch, steeping or steeped in order to the making thereof into malt, by any maltster, &c. shall be found so hard, close, and compact, as it could not be unless the same had been forced together to prevent the rising and swelling thereof, every maltster, &c. where the same shall be so found, shall in every such case forfeit 100*l.*: and if on any supervisor or other officer of excise, or any person employed by any such for that purpose, in the presence of such maltster, &c. or his servant (if such maltster, &c. or servant shall think fit to be present at such operation) throwing or removing the corn or grain from or out of any couch which such supervisor or officer shall suspect to have been trodden, rammed, or otherwise forced together, and returning or throwing such corn or grain back again into the couch, and laying the same level in such couch, any increase shall be found exceeding one bushel in every twenty, above the quantity which the said corn or grain appeared by the gauge taken in

the couch before it was thrown out, then, proof being made of such increase, the same shall be deemed conclusive evidence that such maltster or maker of malt did tread, &c. the said corn or grain in the couch or that the same was so hard, close, and compact, as it could not be unless the same had by some means or other been forced together to prevent the rising and swelling thereof, and shall subject the maltster, &c. to the said penalty of 100*l.* 48 G.3. c.74.

By stat. 2 *G.*2. *c.*1. § 11. No maker of malt shall mix corn or grain making into malt, of one wetting, with corn of a former wetting; or mix any of his couches or floors with corn or grain making into malt of a former wetting, before the same is put on the kiln for drying; on pain of 5*s.* a bushel. 2 G.2. c.1. Mixing with corn of a former wetting.

By stat. 1 *G.*1. *st.*2. *c.*2. § 13. If any maltster or dealer in malt shall fraudulently mix any unmalted corn or grain with malt, or sell or expose to sale any such mixture, he shall forfeit 5*s.* for every bushel. Mixing malt with unmalted corn.

By stats. 1 *G.*3. *c.*3. § 18. and 48 *G.*3. *c.*74. § 20. If any maltster shall fraudulently convey or cause or suffer to be conveyed away from the cistern, uting vat, or other wetting place or utensil, any steeping or part of any steeping of corn or grain making into malt; and shall mix the same with any couch or floor of other corn, &c. making into malt, which shall be then depending and in operation, and which shall have been gauged or charged with the duty in the couch, he shall forfeit 200*l.* Mixing malt gauged with malt ungauged.

By stat. 48 *G.*3. *c.*74. § 17. If any maltster, &c. shall fraudulently conceal any malt or any corn or grain making into malt, from the view of the gauger or officer appointed to take an account of the same, or under whose survey such maltster, &c. shall be, he shall forfeit 200*l.* instead of 10*s.* per bushel imposed by stat. 12 *An.* 48 G.3. c.74. Concealing malt to avoid the duty.

By § 20. If any maltster shall fraudulently convey or cause or suffer to be conveyed away from the cistern, uting vat, or other wetting place or utensil, any steeping or part of any steeping of corn making into malt, so that no gauge thereof can be taken in the couch by the officer; he shall forfeit 200*l.* instead of 100*l.* imposed by stat. 48 *G.*3. *c.*2. § 15. Conveying away malt to avoid being gauged in the couch.

And by § 18. No maltster, &c. shall erect or set up, alter or enlarge, or use any cistern, uting vat, utensil, or other vessel for the wetting or steeping any barley, or other corn or grain for the making of malt, or of any kiln, floor, room, or other place for the making or keeping of malt, or keeping of corn or grain making into malt, without first giving notice thereof in writing at the next office of excise, on pain to forfeit for every such cistern, &c. so erected, &c. without such notice as aforesaid, 200*l.* in lieu and instead of the sum of 50*l.* mentioned in stat. 12 *An.* Penalty for erecting cisterns, &c. without notice.

By stat. 52 *G.*3. *c.*128. § 7. No maker of malt shall mix, either in the couch, or on the floor, or on the kiln, any corn or grain of one wetting, with any corn or grain of a different wetting, on pain of forfeiting 200*l.* 52 G.3. c.128.

By stats. 12 *Ann.* *st.*1. *c.*2. § 4. and 48 *G.*3. *c.*74. § 16. Every maker of malt shall monthly, and every month make a true entry at the next office of excise, of all the malt by him made in such month (either for sale or not for sale), on pain of forfeiting 100*l.* Entry of malt made.

By stat. 52 *G.*3. *c.*128. § 1. Every maltster or maker of malt shall construct every cistern by him intended to be used for wetting or 52 G.3. c.128. Construction of cisterns.

52 G.3. c.128. steeping corn or grain to be made into malt, in such manner and form that any officer of excise may easily and securely have access to the same, and conveniently gauge in any part of two sides of such cistern the corn or grain therein; and if any such maltster, &c. shall have or use any cistern of greater length or breadth than nine feet, he shall provide a sufficient ladder of a proper and convenient length and breadth, with a moveable board or plank of a proper length, breadth, and thickness, to be laid across such cistern, so as to enable the officer easily and securely to move along and stand thereupon, and to gauge in any part of such cistern the corn or grain therein; and such maker of malt shall at all times permit any officer to use such ladder and board or plank for the purpose aforesaid; and if any maker of malt shall neglect so to construct his cistern, or shall have or use any cistern of greater length or breadth than as aforesaid, and shall neglect to provide such ladder and board or plank, or shall not suffer any officer to use the same, he shall forfeit 200*l.*

53 G.3. c.9. Securing access to the officers to gauge the cisterns.

By stat. 53 *G.*3. *c.*9. § 3. after reciting stat. 52 *G.*3. *c.*128. § 1. and that by means of the ladder and moveable plank mentioned in the said act, any cistern may be accurately gauged although not more than one side of such cistern be accessible, and it is therefore expedient to make the provision in the behalf hereinafter mentioned; it is enacted, that no maltster or maker of malt shall be liable to the said penalty, who shall provide such ladder and moveable plank, and also so construct his cistern or cisterns, if more than one, so that the said moveable plank may be laid across every such cistern in every part thereof, in such manner that any officer of excise may easily and securely have access to such cistern and cisterns, and conveniently gauge in every part the corn or grain therein, notwithstanding only one side of such cistern or cisterns, as the case may require, may be accessible, provided such side shall be freely accessible throughout the whole length thereof.

52 G.3. c.128. Maltsters not to have more than five floors of malt arising from the same cistern, at the same time.

By stat. 52 *G.*3. *c.*128. § 2. No maltster shall at the same time have in any malt house more than five floors or quantities of malt, or corn or grain making into malt (in the couch or on the floor or kiln or all or any of them) wetted in or arising from, or pretended to have been wetted in or to have arisen from the same cistern, uting vat, or other vessel or utensil; on pain of forfeiting 200*l.*: Provided, that nothing hereinbefore contained shall subject any maltster, &c. to the said penalty, by reason of his separating any floor or quantity of malt, either into two or more pieces, for working them apart in the same malthouse; nor for dividing his oldest floor solely for removal thereof to the kiln for drying.

Maltsters to lay their floors of corn in succession, according to seniority.

§ 3. Every maltster, &c. shall lay his floors or quantities of corn or grain making into malt, in regular succession one before another according to seniority; and if any maltster shall put them otherwise or shall put any such floor or quantity of a less age or later time of taking from the cistern more remote from such cistern, &c. than any floor or quantity of a greater age or earlier taking from the cistern, &c. he shall forfeit 100*l.*

Maltsters not to empty their cisterns more than once in 96 hours.

§ 4. No maltster, &c. shall empty any corn or grain from any cistern, &c. by him used for the wetting of corn or grain to be made into malt, within 96 hours from the last preceding emptying corn or grain therefrom; nor shall any maltster, &c. within 96 hours

from the last preceding emptying or taking of corn or grain from any such cistern, &c., empty any corn or grain from any other cistern, &c. in the same house, or under the same roof, on pain of forfeiting 200*l*. 52 G.3. c.128.

§ 5. If any maltster, &c. shall, for the wetting of grain to be made into malt, use two or more cisterns, &c. in the same house, or under the same roof, he shall empty the grain out of all such cisterns, &c., on the same days and at the same hours of the day, on pain of forfeiting 200*l*.: Provided that nothing herein-before contained, shall subject ar y maltster, &c. to the said penalty, if the emptying or taking from the last of such two or more cisterns shall have been finished within three hours from the time of beginning the emptying from the cistern, &c. which shall have been first begun to be emptied. Maltsters to empty at the same time all their cisterns.

§ 6. No maltster, &c. shall continue grain in steeping or covered with water, for longer than 55 hours from the time of its being first begun to be wetted, on pain of forfeiting 200*l*. Maltsters not to keep their corn more than 55 hours in steep.

By stat. 53 *G*.3. *c*.9. Where any maltster or maker of malt shall, in the notice by him given to the officer of excise under whose survey he shall then be, of the time he intends to wet corn or grain to be made into malt, specify that it is his intention to continue the same in steep for 65 hours, it shall be lawful for such maltster or maker of malt to continue the same in steep and covered with water for the said space of 65 hours, notwithstanding the 52 *G*.3. *c*.128. § 6. 53 G.3. c.9. Notice of time to be specified for steeping of malt.

§ 2. Provided that no maltster or maker of malt shall begin to wet any corn or grain specified in such notice to be continued in steep for 65 hours, at any other time than between the hours of eight in the evening and eleven at night; and any such maltster shall be at liberty to begin to wet any such corn or grain so specified to be continued in steep for 65 hours, at any time between the hours of eight in the evening and eleven at night; and no such maltster or maker shall empty corn or grain from his cistern at any other time than between the hours of one and four in the afternoon; and if any such maltster, &c. having so specified such his intention, and having wetted any such corn or grain, shall neglect to continue the same or any part thereof in steep or covered with water for any longer or shorter space than 65 hours, or shall begin to wet any such corn or grain at any other time than between the hours of eight in the evening and eleven at night, or shall empty corn or grain from his cistern at any other time than between the hours of one and four in the afternoon of that day on which such 65 hours shall expire, he shall forfeit 200*l*. Time of beginning to steep, or taking grain out of the cistern.

By stat. 52 *G*.3. *c*.128. § 8. If any person shall assault, oppose, molest, obstruct, or hinder any officer of excise in the due execution of this act, or of any of the authorities to him by this act given, the person so offending shall for each such offence forfeit 200*l*. 52 G.3. c.128. Obstructing officers.

§ 9. All fines, penalties, and forfeitures by this act shall be sued for, recovered, levied, or mitigated by the laws of excise, or by action, &c.; one moiety to H. M., and the other to him who shall inform, discover, or sue for the same. Penalties.

By stat. 48 *G*.3. *c*.74. § 23. Every maltster or maker of malt for sale shall, within 14 days next after he shall or ought to have made such entry as is required by stat. 12 *Ann. sess*.1. *c*.2. § 4. pay and clear off all the duties charged upon him, unless such malt- 48 G.3. c.74. Preventing the evasion of payment of duty.

48 G.3. c.74.

ster, &c. shall have given security, approved by the commissioners of excise, or persons appointed by them for that purpose, by bond, in double the value of the duties which such commissioners or person shall judge likely to be charged on and become due from such maltster, &c. within any five months, for the payment at the end of every four months from the day on which such maltster, &c. shall or ought to have made such entry, of all such sums of money as shall be charged on and become due from him; and if any maltster, &c. who shall not have given such security, shall neglect to pay and clear off at the end of such 14 days all such duties, he shall forfeit double the sum.

9 G.1. c.3. Drawback of the duty for malt damaged.

By stat. 9 *G*.1. *c*.3. § 35. If after the payment of the duty, any malt shall be destroyed or damaged by fire, or by the casting away of, or by any inevitable accident happening to the barge or vessel in which it shall be transporting from any part of this kingdom to another, or put on board for that purpose, it shall be lawful for the proprietor to make proof thereof on oath of a credible witness, and that the duty hath been paid, either before the justices of peace of the county, riding, or division where it was made, or put on board, or kept at the time of the loss or damage, or next adjoining to the place where such accident shall happen, at their quarter sessions, or before the major part of the commissioners of excise; who are hereby respectively empowered, where proof shall be made, that such malt was entirely lost or destroyed, and that the duties were paid, to grant a certificate thereof, and of the amount of the duty; upon producing of which to the officer appointed to collect the duty, he shall repay or allow the sum certified to have been paid; and where the malt shall be damaged only, the justices and commissioners are, upon like proof, to settle the *quantum* of such damage, and to give a certificate under their hands and seals of the sum allowed for it, which shall bear the same proportion to the whole duty as the damage shall bear to the value of the malt before it was damaged; which certificate being produced to the officer appointed to collect the duty, he shall repay or allow the sum certified.

Notice to be given to the collector.

§ 36. The person who shall have sustained such loss or damage, or his agent, shall give or leave notice thereof in writing with the collector of excise of the collection next adjoining to the quarter sessions to which he intends to apply, or to the solicitor of the excise, six days before the beginning of such quarter sessions, or application to such commissioners; and shall apply for such relief within one month after the loss or damage.

§ 37. After the justices or commissioners shall have once examined and ascertained such loss or damage, the same shall never after be examined into.

3 G.4. c.18. In cases of application for relief when malt has been lost or destroyed, proof of such loss shall be made in manner herein mentioned.

By stat. 3 *G*.4. *c*.18. § 17. "In all cases where application shall be made under any law now in force for relief in case of malt lost or destroyed, it shall and may be lawful to and for the respective proprietors of such malt to make proof of such loss, and the cause thereof, on the oath or oaths of one or more credible witness or witnesses, and of the duty in respect of such malt having been duly charged or paid by the respective maltsters, makers, or owners thereof, either before the justices of the peace of the county, riding, or division where such malt was kept at the time the accident happened, or had been loaded or put on board the

vessel in which the loss was sustained, or next adjoining to the place where such accident happened, or was first discovered, at their general quarter sessions, or before the commissioners of excise for the time being, or any three of them, who are hereby severally and respectively empowered to summon before them the witnesses necessary to make such proof, under the penalty for non-attendance of 20*l.*, to be levied by distress and order of such justices or commissioners respectively, and to administer to such witnesses the oath herein-before mentioned; and upon such proof being made by such witnesses, or by legal documents, to grant such certificate and make such order and allowance for relief as is and are directed by the said act or acts of parliament in that case made and provided: Provided always, that no such person or persons shall be entitled to any relief or allowance in any such case, unless notice in writing of the accident by which such loss has been sustained, describing the nature, cause, and extent of such loss as aforesaid, shall be delivered to the commissioners of excise, or to the supervisor of excise of the district in which such accident shall have happened, or where such loss shall have been first discovered, within three days next afterwards; or unless such person or persons as aforesaid, who shall have sustained such loss or damage, or his, her, or their agents, shall give or leave notice in writing with the supervisor or collector of excise of the division or collection where such quarter sessions shall be held, of his, her, or their intention to apply for such allowance or relief, or to the solicitor of excise for the summary jurisdiction where such application is intended to be made to such commissioners as aforesaid, 14 days at the least before the beginning of such quarter sessions, or before such application to such commissioners, and shall apply for such relief within one month after such loss, or at the next general quarter sessions of such justices happening after the expiration of such month." 3 G.4. c.18. Notice to be given to the commissioners, &c.

By stats. 12 *G.*1. *c.*4. § 48. and 33 *G.*2. *c.*7. § 14. No malt entered and made for exportation only shall be liable to the duties; and no drawbacks shall be allowed for any malt exported. Making malt for exportation.

By stats. 1 *G.*3. *c.*3. § 9. and 59 *G.*3. *c.*3. § 8. Where any bounty is allowed on the exportation of malt, there shall be allowed for every 20 quarters of grain, 30 quarters when dried and made into malt, and no more; though by the steeping or watering thereof, it may be run out into a greater quantity. Allowance to maltsters for grain made into malt.

By stat. 12 *G.*1. *c.*4. § 49. 58. Every maker before he shall begin to wet any grain to be made into malt for exportation, shall leave notice in writing with the officer of the quantity of grain intended to be contained in each steeping, on pain of 50*l.*; and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5*s.* a bushel. 12 G.1. c.4.

§ 50. No maker of malt shall begin to wet or steep any corn to make into malt for exportation above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption above six days before all the corn on his floors for exportation be dried and locked up, on pain of 5*s.* for every bushel.

By stat. 3 *G.*4. *c.*18. § 12. Every maker of malt shall keep each steeping of grain making into malt for exportation, when the same shall be on the kiln, or after it shall be taken off, separate from 3 G.4. c.18. Grain making into malt for exportation to

be kept separate until measured. all other steepings, until the same shall be measured, on pain of forfeiting 50*l.*

3 G.2. c.7. By stat. 3 *G.*2. *c.*7. § 16. The maker shall keep the whole quantity of his corn making into malt for exportation, of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting, until it hath been measured in presence of the officer, on pain of 50*l.*

12 G.1. c.4. By stat. 12 *G.*1. *c.*4. § 52. The officers during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gauge and take an account thereof in all its operations, as in case the duties were to be charged thereon.

§ 58. And persons opposing the officers in the execution of this act, shall forfeit 50*l.*

12 G.1. c.4. 3 G.2. c.7. Notice of taking malt off the kilns. Such malt to be exported or stored. By stats. 12 *G.*1. *c.*4. § 51. 58. and 3 *G.*2. *c.*7. § 17. The maker shall give notice in writing to the officer, or leave notice at the next excise office, of the hour when he intends to take any malt off the kiln, that the officer may attend the measuring; and after it has been measured, it shall (on pain of 50*l.*) be immediately carried on shipboard, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation.

3 G.2. c.7. And by stat. 3 *G.*2. *c.*7. § 18. If the maker, or any person with his privity, shall open such lock, or make any way or kind of entrance into the place, or carry any of it away, without knowledge or consent of the officer, or notice given to him, he shall forfeit 100*l.*

3 G.4. c.18. Notice to be given of the hour when malt for exportation is to be taken off the kiln. Such malt to be carried immediately on shipboard, or secured, on penalty of 50*l.* By stat. 3 *G.*4. *c.*18. § 13. All maltsters or makers of malt for exportation shall give notice in writing to some officer of the duties upon malt, or leave notice in writing at the next office of excise where the journal is kept, of the hour when he, she, or they shall intend to take any malt off the kiln, that such officer may attend the measuring of such malt; and after such malt has been measured, the same shall be immediately carried on shipboard, if intended to be then exported, or else shall be immediately locked up and secured in some storehouse or other place belonging to such maltsters or makers of malt, in the presence of the said officer, on pain of forfeiting the sum of 50*l.*

Storehouse where such malt is secured not to be opened, or entrance made, without giving notice to the officer, on penalty of 100*l.* § 14. If any such maltster or maker of malt, or any other person by his order, privity or direction, after any steeping or making of malt shall have been locked up and secured in any storehouse, or other place, in manner as aforesaid, shall open any of the locks or doors, or shall make any way or kind of entrance into such storehouse, or other place, or shall remove any part whatsoever of the partition between any such storehouse or place, and any other place whatsoever next thereunto adjoining, or shall remove out of the said storehouse or other place any quantity whatsoever of the malt that has been so locked up and secured, without the knowledge and consent of, or without first having given notice to, some officer for the said duties, he, she, or they shall respectively forfeit the sum of 100*l.*

By stat. 12 *G*.1. *c*.4. § 53. When any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer 40 hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it is to be removed, the officer shall attend at the place where the malt is locked up, and see it measured and delivered out. 12 G.1. c.4.

§ 54. The officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is intended to be removed, expressing the quantity, the name of the maker or proprietor, and the place whence delivered, who shall file the same, and make an entry thereof; and if the maker or proprietor shall neglect to deliver such certificate, he shall forfeit 50*l*.

§ 57. Persons intending to ship malt for exportation shall give at least 48 hours' notice before they begin to put it on board to the officer of the port, in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5*s*. a bushel.

§ 57. If the malt so entered and made for exportation shall not, within nine months next after the making and drying, and carrying into such room, and there locked up as aforesaid, be exported, the proprietor shall for every bushel forfeit 5*s*.

§ 56. During the shipping, at all such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked from the time the ship shall be fully loaded till it be ready to sail.

§ 58. And persons breaking open the hatches of any ship so locked down, shall forfeit 50*l*.

§ 55. The officer may not only attend the measuring of such malt, but continue on board the ship till it be cleared of the port.

By stat. 3 *G*.4. *c*.18. § 15. And the better to enable the officers for the duties upon malt to discover whether all such malt made for exportation, and that has been locked up and secured in any storehouse or other place or places to be exported, has been really exported; it is enacted, That every such maltster or maker of malt, who shall at any time have any quantity of malt locked up and secured in any storehouse or any other place, as is before directed, to be exported, shall within 15 months next after the 5th day of *July* preceding remove and clear out of his storehouse, or other place, all and every part and parcel thereof, that at any time after the said 5th day of *July* shall be locked up, and secured in such storehouse or other place, in order to be exported, and shall always from time to time in every 15 months after the 5th day of *July*, remove and clear out of such storehouse or other place, in order to be exported, all and every part or parcel of malt that at any time within the 15 months next after the 5th day of *July* preceding shall be locked up and secured in any storehouse, or in any other place that shall be made use of by him, for the keeping of malt for exportation, on pain of forfeiting the sum of 50*l*.

3 G.4. c.18. Storehouses used for securing malt for exportation to be cleared out every 15 months after the 5th of July, on penalty of 50*l*.

§ 16. If after the shipping of any malt made to be exported, the malt so shipped to be exported, or any part thereof, shall be

Malt, re-landed after being ship-

3 G.4. c.18.

ped, shall be forfeited and treble its value.

re-landed in any part of *G.B.*, then and in every such case, all the malt which shall be re-landed, and treble the value thereof, shall be forfeited; (that is to say,) one moiety thereof to the king, and the other moiety thereof to the person or persons who shall seize, inform, or sue for the same; and such malt so re-landed shall and may be seized by any officer or officers of customs or excise.

Recovery and application of penalties.

§ 18. All fines, penalties, and forfeitures imposed or created by this act, shall be sued for, recovered, levied, or mitigated by any law of excise, or by action or information in any of H. M.'s courts of record at *Westminster* or in the court of exchequer in *Scotland;* and one moiety shall be to H.M. and the other moiety to him who shall inform, discover, or sue for the same.

Powers of 12 C.2. c.24. &c. extended to this act.

§ 19. All powers in and by stat. 12 *C.2. c.24.* or any other law relating to excise, shall be put in execution for the purpose of this act, &c.

1 G.3. c.3. 59 G.3. c.3.

By stat. 1 *G.3. c.3.* § 15, 16. and by 59 *G.3. c.3.* § 13. Every maker of malt having stock in any storehouse on the 24th *June* 1819, or who shall use any such storehouse for keeping of malt for exportation, shall every 15 months after the last clearing clear out the same on pain of 50*l.*

6 G.1. c.21.

By stat. 6 *G.1. c.21.* § 4. If any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5*s.* for every bushel.

12 Ann. st.1. c.2.

By stat. 12 *Ann.* stat. 1. *c.2.* § 30. If ground malt shall be exported, it shall be computed at so many bushels as it contained before it was ground.

Power of the justices.

§ 9. The penalties relating to this article (except where otherwise directed) shall be sued for, levied, and mitigated as by the laws of excise (*a*), or in the courts at *Westminster;* and be employed half to the use of the king, and half to him that shall sue. See also 24 *G.2. c.40.* § 29. 42 *G.3. c.38.* § 36.

Appeal.

By stat. 12 *Ann.* stat. 1. *c.2.* § 37, 38. Persons aggrieved by any judgment of the justices on account of forfeitures and offences may appeal to the next quarter sessions, giving six days' notice in writing; but if there be not six days between the order of the justices and the sessions, the appeal may be at the second sessions. See also stat. 1 *G.2.* stat.2. *c.16.* § 3.

The clauses in these and former acts respecting appeals against the judgment of two justices, do not extend to convictions for *penalties*. *R.* v. *Skone*, 6 *East*, 514. *Sed vide* 48 *G.3. c.74.* § 15. *post*, p.216., which in express terms gives the appeal in cases of *penalties*.

The King v. Crisp, E. 46 G.3.

It may be useful to state the following case, viz. The *King* v. *Crisp*, 7 *East*, 389., which, as well as *R.* v. *Skone*, arose on stat. 42 *G.3. c.38.* § 30. (although repealed by 46 *G.3. c.139.* § 1.) The defendant had been convicted upon the 42 *G.3. c.38.* § 30., and the conviction stated (amongst other things not material in this place), " that the defendant *within three months now last past*, " at W. *did wet, &c. certain corn* and grain of him the said S. C. " then and there *making into malt in a certain state* and stage *of* " *operation*," &c.; the conviction after stating the rest of the information, the summons and the appearance of the defendant, and

(*a*) Vide ante, Sect. II. (*b*) p.58.

his plea of not guilty, proceeded to state thus, "and that the said J. F. (the informant) on his oath saith, that he is an officer of excise, and that the said defendant *is a maltster at Wangford* in this county, *and that he*, with the said W. R. *surveyed the malt-house of the defendant at* W. *aforesaid*, on the said 12th of *May*, *and found a floor of malt in operation very wet*, &c. which had been watered within four days after it had been taken from the cistern." — It was objected that the evidence did not prove an offence within the statute. The offence is the *wetting*, &c. of *corn or grain making into malt*, in a state of operation. The evidence is, that the witnesses found a *floor of malt in operation* very wet. — But *corn or grain making into malt*, is not *malt*; and in § 31. of the act there is a distinct penalty for wetting *malt*, before delivery to the brewer; and the duty is on the malt in its finished state; and it ought to have been stated, that it was so wetted before it had been 12 days taken *out of the cistern used by him for steeping it*. Whereas it might have been in operation *for brewing*, and taken out of the cistern used by him for brewing. But the court said, that "*malt in operation*" meant "*not finished*." And they added, that if it could be shewn that there was any way in which a *floor of malt* could be *in operation* for any other purpose than that of making malt, a doubt might have been thrown upon it. Then it was objected that there was no evidence of the defendant's being a *maltster*; for that a man might have a *malt-house* and not be a *maltster*; — and that it was not even stated that the *malt* or *cistern* belonged to the defendant. Ld. *Ellenborough* Ch. J. said, the witness deposed, that on *the* 12*th of May he surveyed the malt-house of the defendant*, and found a floor of malt in operation, &c.; it could not be then the defendant's *malt-house*, nor could the officer then have surveyed it, unless the defendant had *entered* the malt-house *as a maltster*; it would otherwise have been miscalled the defendant's *malt-house*. The term *survey* too is used in the malt acts, and I believe that the officer has no authority to survey a malt-house unless it be entered as such. *Grose* J. agreed, and *Le Blanc* J. also, who added, that if it were sufficient *primâ facie* evidence from whence the magistrates might collect the fact, it was sufficient to warrant the conviction. *Lawrence* J. doubted. But the conviction was affirmed. Rex v. Crisp.

By stat. 48 *G.*3. *c.*74. § 1. Every maltster or maker of malt shall, within 10 days after *July* 5th in each year, deliver to the officer of excise, under whose survey he shall then be, a true account in writing of all barley not made into malt, or in actual operation, which he shall have in his possession, or which shall then be in the possession of any person in trust for him or for his use; and in such account describe the particular warehouse, storehouse, loft, room, granary, or other place in which any such barley shall be lodged, and the number of bushels contained in each, and shall, if required, shew to such officer every such warehouse, &c. and all such barley therein; on pain of forfeiting 100*l.* 48 G. 3. c. 74. Maltsters to deliver annually an account of stock of barley. On penalty of 100*l.*

By § 2. Whenever any maltster, &c. shall have dried off all the malt in operation in any particular malt-house, he shall, 24 hours at the least before he shall begin to wet or steep any corn or grain for making into malt, deliver to the officer, under whose survey he shall then be, a like account, on pain of forfeiting 50*l.*: Provided that nothing in this act shall extend to any barley unthreshed, if that Maltster to deliver an account before he begins to work, on penalty of 50*l.* Account of grain to be en-

48 G.3. c.74.

tered when threshed, and removed to the entered store.

the maltster, &c. possessed thereof, shall enter in such book as is hereinafter mentioned, the grain arising from the threshing, and removed out of the barn, &c. (except to the premises of some person to whom the same shall be disposed of) as barley brought in by such maltster, &c. See 12 *Ann. st.*1. *c.*2. § 36. *ante*, p.201.

Barley declared as in stock to be entered in a book to be kept by maltsters, on penalty of 50*l*.

§ 3. Every maltster, &c. shall keep a book, to be delivered to him by the proper officer of excise; and shall enter therein the total quantity of barley in the particular accounts directed by this act to be given to the officer on the day on which such account shall be so given, on pain of forfeiting for every neglect or refusal 50*l*.

All barley received to be entered in a book.

§ 4. Every maltster, &c. shall on the day on which he shall receive any barley into his possession, enter in such book a true and particular account of the number of bushels he shall receive into his possession, or which shall be received into the possession of any other in trust for him, or for his use, and also the christian and surname, and place of abode of the person from whom purchased or received, and also an account of the quantity in bushels, which shall at any time be wetted or put into steep for making into malt, and also the particular day and hour at which such barley was so wetted or put into steep; and every maltster, &c. who may be desirous to sell, remove, or otherwise dispose of any barley, or skreenings of barley, shall, on the day in which the same shall be sold or delivered, enter a particular account of the number of bushels sold, &c. in any quantity exceeding one bushel, and the name and residence of the person to whom sold, and shall every day enter as aforesaid, an account of the gross quantity so sold, &c. in the preceding day in quantities not exceeding one bushel, on pain of forfeiting 100*l*.: But no maltster, &c. shall be subject to the said penalty by reason of his not entering the name or abode of the person from whom any barley unthreshed was purchased or received.

Penalty for neglect 100*l*.

Books to be open to inspection of officers.

And by § 5. Every such book shall at all times be produced to and left open to the free inspection of the proper officer, who shall be permitted to examine and cast up, and make copies or extracts from the entries contained therein, and to insert the time of such inspection or examination, and sign his name thereto.

Barley or malt lodged in different premises may be kept by the officers as distinct stocks.

By § 6. If any maltster, &c. shall lodge any barley or malt in different warehouses, storehouses, lofts, rooms, granaries, or other places, not under the same roof, or separated from each other in anywise howsoever, the stock of such barley or malt shall, if the supervisor shall deem it expedient, be deemed to be distinct stocks; and be surveyed and kept account of accordingly.

Barley to be laid regularly and even, to enable the officers to gauge the same.

By § 7. Every maltster, &c. shall so often as he shall be required by any officer cast or place all barley in his possession, not in a state of operation for being made into malt, into such regular form as may enable the officer conveniently to gauge and ascertain the true quantity, on pain of forfeiting 100*l*. And if the quantity of barley not in operation shall be found to exceed the quantity which any such maltster, &c. ought to have in his possession, according to the true result drawn from adjusting such book as aforesaid, in the proportion of one bushel in every 20 bushels of barley, every such maltster, &c. shall be adjudged to have received barley into his possession, and to have neglected to make such entry in the said book as by this act is required.

Excess upon casting up and balancing stock to be considered as not entered.

And by § 8. If any officer, upon gauging and taking account of the quantity of barley not in operation, shall find the quantity less than the quantity which he ought to have in his custody, according to the true result drawn from adjusting such book, and the entries therein, in the proportion of one bushel in every 20 bushels of barley of the quantity received, the maltster, &c. shall be deemed to have wetted and steeped barley for making into malt, and neglected to make entry in such books as by this act required; and every such maltster, &c. shall, above the penalty by this act imposed for the neglect or refusal to make such entry, be charged with the duty for every bushel of barley so found deficient.

48 G. 3. c. 74. Deficiency upon balancing stock to be charged with duty.

By § 9. Every maltster, &c. shall, before the officers take such account, be required by the officer, and be permitted to make due entries in such book of all barley, or skreenings of barley, which he may have received into his possession, or have wetted, or have otherwise disposed of in the course of the day in which such account is proposed to be taken, or of the day preceding; and if any dispute shall arise respecting the true quantity so taken account of, such maltster, &c. shall be allowed immediately and with all due diligence to measure the same in the presence of such officer by a just *Winchester* bushel to be provided by such maltster, &c.; and the quantity ascertained by such admeasurement shall be taken to be the true quantity in the possession of such maltster, &c.

Book to be filled up before cast up by officer.

Maltster may require stock of barley to be measured, if he disputes the accuracy of officer's gauge.

By § 10. If any maltster, &c. shall purchase or receive, or send out barley by any measure other than the *Winchester* bushel, he shall enter the quantity in such book according to the just number of *Winchester* bushels, or shall specify against each quantity the exact measure in which he shall enter; that is to say, whether the quantity is in bushels of eight gallons, eight gallons and a quarter, eight gallons and a half, eight gallons and three-quarters, or nine gallons, or any and what other measure; and the officer, on adjusting the stock, shall reduce the whole quantity to *Winchester* bushels.

To be entered according to Winchester bushel, or otherwise the measure to be described.

By § 11. It shall be lawful for any justice of the peace before whom any information shall be exhibited against any maltster, &c. for any offence against the laws of excise respecting the duties on malt, to summon any farmer, maltster, or dealer in barley or malt, or other person, and to examine such person upon oath, touching the sale or delivery, or the purchase or receipt of any barley sold, sent out, delivered, or received by any such farmer, &c. except as to the price or value thereof; and if any farmer, &c. shall neglect to obey such summons, or refuse to give evidence when required, he shall forfeit 50*l*.

Justices may summon evidence.

And by § 12. In all cases of prosecutions or informations under this act for any deficiency or excess in the quantity or stock of barley in the possession of any maltster, &c. it shall be lawful for the defendant to prove that the deficiency was actually and *bonâ fide* caused by barley stolen or conveyed away without the privity or consent of such defendant, or that such deficiency or excess was occasioned by unintentional error in entering and keeping the accounts, without any design of fraud; and if the justices or court before whom any such information shall be heard and tried, shall be satisfied by the evidence of one witness that such deficiency or

In cases of prosecutions for deficiency or excess in the quantity of barley, defendants may prove that it was not occasioned by fraud.

48 G.3. c.74.

excess was occasioned without any intention of fraud, they may acquit the defendant.

Persons aggrieved in cases relating to the making of malt may appeal to the quarter sessions.

By § 15. Reciting that whereas doubts had arisen whether any appeal lay, in certain cases, concerning the making of malt, or the duties on malt, or any penalty or forfeiture relating to the same, from any judgment, order, or determination, or any conviction of justices, to the justices assembled at the quarter sessions of the peace: for obviating such doubts, it is enacted, that it shall be lawful for any person who shall find himself aggrieved by any judgment, order, determination, or conviction of any justice of the peace, in any case concerning the making of malt, or any of the duties on malt, or any penalty or forfeiture relating to the same, to appeal from such judgment, &c. to the justices assembled at the next general quarter sessions of the peace to be holden for the county, riding, shire, stewartry, city, or place in which such judgment shall have been given, or order, &c. made; which said justices, or the major part of them so assembled, are thereby empowered to hear and finally determine concerning the truth of the facts and merits of the case in question between the parties to such judgment, &c. respectively; and if at such quarter sessions any defects of form shall be found in such proceedings before the justice who gave such original judgment, &c. such defects shall or may be rectified and amended by the order or orders of such justices, or the major part of them so assembled; and no writ of *certiorari* shall be allowed to set aside any determination or order of the said justices, or the major part of them so assembled: Provided, that upon every such appeal the justices so assembled at such quarter sessions, shall and do proceed to re-hear, re-examine, and re-consider the truth of the facts and the merits of the case in question between the parties to such original judgment, &c., and to re-examine thereto upon oath the same witnesses, or any of them, and no other, who shall have been before examined before the justice or justices of the peace at the original hearing.

Increased penalties made perpetual.

And by § 21. The said several penalties by this act imposed in lieu of the said lesser penalties respectively, herein-before mentioned, shall be made perpetual.

Form of conviction.

And by § 22. Every conviction by or before any justices of the peace for any fine, penalty, or forfeiture, fines, penalties, or forfeitures by this or any other act of parliament relating to the duties of excise on malt imposed, may be made in the form following; to wit,

BE it remembered, that on the ——— *day of* ——— *in the year of our Lord* ——— A.B. *was, on the complaint of* C.D., *he the said* C.D. *then and there being an officer of excise, convicted before us, two of the justices of the peace for the county of* ——— [or, *for the riding or division of the county of* ——— or, *for the city, liberty, district, or town of* ——— as the case shall happen to be] *in the penalty of* ——— *in pursuance of an act made in the* ——— *year of the reign of king* George *the third, for* ——— [as the case may be]. *Given under our hands and seals the day and year first above written.*

Penalty on obstructing officers.

And by § 24. If any person shall molest any officer in the execution of this act, or of any of the powers to him by this act given, the person so offending shall for each such offence forfeit 100*l.*

By § 25. All fines, &c. by this act imposed, shall be sued for, &c. as any fine, &c. may be by any law of excise, or by action, &c.; one moiety to his majesty, the other to him who shall inform, discover, or sue for the same. 48 G.3. c.74. Recovery of fines and penalties.

And by § 26. The provisions of other acts shall be put in execution for the purposes of this act, as if re-enacted herein. Extending provisions of former acts.

By stat. 12 *Ann. st.*1. *c.*2. § 38. The justices at their quarter sessions may award costs to either party, as they shall think fit, to be levied by warrant of the justices or two of them, on the goods of the party.

§ 37. No *certiorari* shall be allowed to set aside any order of the justices. Certiorari.

§ 10. And all malt in custody of the maker shall be liable to the duties and penalties in the same manner as if he were the lawful owner. See also stat. 28 *G.*3. *c.*37. § 21. Malt liable to the duties and penalties.

Mum. *See* **Excise,** (*Ale and Beer.*)

IV. (12.) Paper.

[10 Ann. c.29. — 1 G.1. st.2. c.36. — 11 G.1. c.7. — 24 G.3. sess.2. c.41. — 26 G.3. c.77. — c.78. — 28 G.3. c.37. — 32 G.3. c.54. — 34 G.3. c.20. — 41 G.3. (U.K.) c.8. — 42 G.3. c.94. — 43 G.3. c.69. — 46 G.3. c.112. — 53 G.3. c.103. — 55 G.3. c.30. — 56 G.3. c.103. — 1 G.4. c.58. — 3 G.4. c.27.

Paper which hath paid the duty may be exported, and also books; and drawbacks are to be allowed, subject to the regulations in this and former acts relating to the exportation of paper. 26 *G.*3. *c.*78. § 19. — 34 *G.*3. *c.*20. § 28 — 34. — 43 *G.*3. *c.*69. *Sched.* (C.) — 56 *G.*3. *c.*103. Exportation.

By stat. 26 *G.*3. *c.*77. § 5. The officer, who shall attend to see the same packed in order to be exported, shall take off the stamps from each ream or bundle; and if any person shall obstruct him herein he shall forfeit 50*l.* 26 G.3. c.77.

By stat. 43 *G.*3. *c.*69. *Sched.* (A.) (B.) certain excise duties were imposed upon papers of different kinds, not being sheathing paper, or button papers or button-board; but by stat. 47 *G.*3. *sess.*2. *c.*30. this exception is repealed, and they are made subject to the same duties as millboard, and subject to the same regulations, &c. as other exciseable commodities. 43 G.3. c.69. 47 G.3. sess.2. c.30.

By stat. 1 *G.*4. *c.*58. § 21. Scaleboard is to be charged as millboard, and scaleboard makers are liable to the laws and regulations imposed on paper makers. These several duties upon paper are to be under the management of the commissioners of excise. 1 G.4. c.58. Scaleboard.

By stat. 59 *G.*3. *c.*52. Certain duties of customs are also payable upon papers. 59 G.3. c.52.

But by stat. 11 *G.*1. *c.*7. § 16. Old rags, old ropes, or junks, or old fishing nets, may be imported duty free. 11 G.1. c.7.

By stat. 32 *G.*3. *c.*54. § 1. The officers of the customs, where any printed, painted, or stained paper shall be imported, shall cause the same to be marked, and the commissioners shall provide for them proper frames and stamps, and such numbers or marks as they shall think fit; which officers are required to measure every such piece of paper, and to mark the same with such frame mark and stamp as follows: — every piece of less than half a yard 32 G.3. c.54. Importing printed, painted, or stained paper.

32 G.3. c.51. in length to be marked and stamped at one end only; and every piece of half a yard in length or upwards to be marked and stamped at both ends of such piece; which frames, &c. may be from time to time altered as the commissioners shall think fit. And if any person shall counterfeit or forge any frame, number, or mark, or the impression of the same, upon any such paper, he shall forfeit 100*l.*; or if he shall counterfeit or forge, or resemble any stamp or seal so provided, or counterfeit or resemble the impression of the same, thereby to defraud his majesty, he shall forfeit 500*l.*: And if any person shall sell any printed, painted, or stained paper with such counterfeit stamp, knowing the same, he shall forfeit 50*l.*

§ 2. If any person shall wilfully cut out, obliterate, or deface any such frame mark, number, or mark, or suffer the same to be done, he shall forfeit 50*l.* for every piece so cut, &c.

§ 3. If any person shall fraudulently affix upon any such piece of paper any frame mark, or stamp, or seal which hath been before used, he shall forfeit 50*l.*, and also every such piece of paper.

§ 4. If any person shall make oath before two commissioners within their limits, or elsewhere before one justice, that he hath reason to suspect that any foreign imported printed, painted, or stained paper, for which a duty ought to have been paid, is or shall be in the custody of any printer, painter, or stainer of paper, or person dealing therein, or other person for his use, without having such stamps or seals as aforesaid, they may authorize any officer of the customs or excise, with the assistance of a constable, in the day time, to search for the same, and to open doors, chests, trunks, and packages, and the paper so found unstamped shall be forfeited, and may be seized by any officer of the customs or excise: Provided always, that no remnant or piece of such paper, being of less length than shall be expressed by such frame mark so found, having such stamp or seal as aforesaid at one end thereof, shall be forfeited, by reason of not having such stamp or seal at both ends thereof: And if any person shall obstruct any of the said officers in the execution of their duty herein, he shall forfeit 50*l.*

§ 5. To prevent frauds in adding to any piece or remnant of such paper, after the same hath been stamped or sealed, and also to prevent the importation of any such paper without being stamped or sealed as aforesaid, if any piece or remnant of such foreign imported paper, not having such frame mark and stamp thereon as aforesaid, (or having the same at one end or both ends thereof, and being of a greater length by half a yard or more than by such mark is expressed), shall be found in the possession of any printer, painter, or stainer of paper, or dealer therein, the same shall be forfeited, and may be seized in manner aforesaid; and the person in whose possession the same shall be found shall also forfeit 50*l.*

§ 6. All penalties and forfeitures by this act imposed may be sued for, recovered, levied, or mitigated, as by the laws of excise, or in the courts at *Westminster*, half to the king and half to him who shall sue.

34 G.3. c.20. Importing books for sale first printed in this kingdom,

And by stat. 34 *G.3. c.*20. § 57. If any person shall import for sale any books first composed, written, or printed and published in this kingdom, and re-printed in any other country; or shall knowingly sell, publish, expose to sale, or have in his possession

for sale, any such book, the same shall be forfeited, and also 10*l.* and double the value of each copy of such book, which may be seized by any officer of the excise and customs, and the same shall be forthwith made waste paper; and the commissioners of customs or excise shall reward their respective officers who shall make such seizure with a sum not exceeding the value of the books.

34 G.3. c.20.

and re-printed in any other.

Provided that this shall not extend to any book that has not been printed or re-printed in this kingdom within twenty years before the same shall be imported, nor to any book re-printed abroad and inserted among other books or tracts to be sold therewith, in any collection where the greatest part of such collection shall have been first composed or written abroad. *Id.*

24 G.3. sess.2. c.41. 43 G.3. c.69. 55 G.3. c.30. Licence.

By stat. 24 *G.*3. *sess.*2. *c.*41. § 1. 7. and 43 *G.*3. *c.*69. *Sched.* (A.), every *maker* of paper or pasteboard, and every *paper stainer*, shall take out a licence from the office of excise, for which he shall pay 2*l.* [and by stat. 55 *G.*3. *c.*30. (*a*) the further sum of 2*l.*] and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting 20*l.*

Persons in partnership.

But by stat. 24 *G.*3. *sess.* 2. *c.*41. § 8. Persons in partnership need not have more than one licence for one house.

53 G.3. c.103 Transfer or removal of licences.

By stat. 53 *G.*3. *c.*103. Upon the death of any person licenced, or upon the removal of any person from the house or premises in which his licence shall authorize him to make or manufacture, deal in, vend, or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorise the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted.

42 G.3. c.94. Two classes of paper.

By stat. 42 *G.*3. *c.*94. § 10. All brown paper made of old ropes or cordage only, without separating or extracting the pitch or tar therefrom, and without any mixture of other materials therewith, shall be deemed and taken to be paper of the second class or denomination, and shall be charged with the duty accordingly; and all other paper whatever (glazed paper for clothiers and hotpressers excepted) shall be deemed and taken to be of the first class or denomination, and chargeable accordingly.

1 G.4. c.58. Paper of the first class pressed together without paste liable to the duties imposed on that class.

By stat. 1 *G.*4. *c.*58. § 20. If any maker of paper shall couch or press together, without the use of paste, any paper of the first class, or the materials thereof, without any sheet of paper of the same or any other class or materials, all such paper so couched or pressed together shall be liable to the duties upon paper of the first class.

Paper distinguished by first and second class: millboard, button-board, &c. to bear their different denominations.

§ 15. Whenever paper, &c. are required to be distinguished by the classes and kinds, the same shall not be required to be otherwise distinguished than into paper of the first and second class; and millboard, button board, button paper, glazed paper, sheathing paper, pasteboard, and scaleboard, into their several denominations: And no penalty shall be incurred by not distinguishing or separating the same into their several sorts.

(*a*) The duties by stat. 43 *G.*3. *c.*69. are granted without limitation of time. Those by stat. 55 *G.*3. *c.*30. are by stat. 3 *G.*4. *c.*27. to continue until 5 July, 1826.

1 G.4. c.58. Scaleboard makers liable to the laws and regulations imposed on paper makers.

§ 21. After reciting that whereas scaleboard is an article made from the shaving or cutting of wood, and is used in the manufacture of various articles as a substitute for millboard and pasteboard, and has been included in the laws of excise, and doubts have arisen whether the makers are subject to the regulations on makers of paper: enacts, that every maker of scaleboard shall be subject to the regulations, penalties, and forfeitures in force in respect to makers of paper, and shall take out a licence as a maker of paper, and all scaleboard shall be tied up, labelled, charged with duty, and removed as millboard.

41 G.3. c.8. No paper to be painted for hangings, but of the first class.

By stat. 41 *G*.3. (U.K.) *c*.8. § 6. No person shall print, paint, or stain any paper to serve for hangings or other uses, except such in respect whereof the duty chargeable on paper of the first class hath been charged, nor unless such paper have been previously produced to the officer, inclosed in the original wrapper in which it was charged, and with the impression of the stamp denoting such charge, and the name of the officer and date of the charge, and the class of such paper marked and remaining visibly thereon; and such printer, painter, or stainer shall open every ream and bundle of such paper, in the presence of such officer, who shall thereupon take an account of the quantities and dimensions thereof, and stamp the same according to law.

Maker not to diminish paper before it be charged.

§ 7. If any maker shall cut or diminish any paper before the same shall be taken account of, weighed, and charged, he shall forfeit 50*l*. and also such paper; which shall also be seized.

42 G.3 c 94. Pasteboard to be made of paper charged, and unused, on pain of 100*l*.

By stat 42 *G*.3. *c*.94. § 11. No pasteboard shall be made of any material except paper which has been charged with the full duties of excise, and has not been used for any purpose, on pain of forfeiture of the pasteboard and all implements, utensils, materials, and preparations used in making such pasteboard (all which shall also be seizable), and also of 100*l*.

Makers thereof to produce the paper, &c. on pain of 100*l*.

§ 12. Before any maker shall begin to make any paper into pasteboard, he shall produce to the officers all such paper as he shall intend to make into pasteboard in the original wrappers in which the same was charged, and having the excise duty stamp legible on each ream thereof, and shall take the said wrappers from the said paper in presence of such officer, who shall take account of such paper, its quantity and weight, and destroy such duty stamp; and that such officer may be enabled to take such account, every such maker of pasteboard shall give 24 hours' notice in writing of his intention to produce such paper, and shall specify the quantity thereof, and the day and hour when he intends to produce the same; and for neglect of giving such notice, or using any paper for pasteboard before producing the same, and such account being taken, such maker of pasteboard shall for every offence forfeit 100*l*.

No maker of pasteboard shall be a paper maker, nor make within ¼ of a mile, on pain of 100*l*.

§ 13. No maker of pasteboard shall carry on the business of a maker of paper; nor shall any maker of pasteboard set up or carry on the business of making pasteboard within one quarter of a mile of any mill or manufactory for the making of paper, on pain of 100*l*.

What pasteboard makers are within 42 G.3. c.94.

By stat. 56 *G*.3. *c*.103. § 13. The provisions of 42 *G*.3. *c*.94. § 11, 12. respecting the materials from which pasteboard is to be made, shall apply only to such makers of pasteboard as are not makers or concerned in the trade of a maker of paper, millboard, button-

board, button paper, glazed paper, or sheathing paper; and it shall be lawful for every maker of paper, millboard, button-board, button paper, glazed paper, or sheathing paper, to make, at his entered paper mill, any pasteboard, subject to the duties herein mentioned, according to the quality thereof, from paper, millboard, button-board, button paper, glazed paper, or sheathing paper made by him at such mill, before the same shall have been charged with the duty. 56 G.3. c.103.

§ 15. There shall be allowed to every maker of pasteboard, not being a maker or concerned in the trade of a maker of paper, millboard, button-board, button paper, glazed paper, or sheathing paper, who shall make pasteboard, and be charged with the duties thereon, from paper, millboard, button-board, button paper, glazed paper, or sheathing paper, for which the duties shall have been paid, and which shall have been taken account of by the officer before the making thereof into pasteboard, so much of the duties paid for such paper, &c. as shall be equal to the duty paid by the maker of such pasteboard, upon oath being made by such maker, or his principal workman, to be administered by the collector or supervisor of excise, that such pasteboard has been wholly made from duty-paid paper, &c. so previously produced and taken account of. Allowance of duty to pasteboard makers.

And by stat. 34 *G*.3. *c*.20. § 5. Every maker of paper, pasteboard, millboard, scaleboard, or glazed paper, before he shall begin, shall make entry in writing at the next excise office of every mill, workhouse, and other place by him intended to be used for making, drying, or keeping paper, &c. or materials proper to be made into paper, &c.; and of all vats, presses, utensils, and vessels intended to be used in making the same, on pain of forfeiture thereof, and also 50*l*. 34 G.3. c.20. Places of making or keeping to be entered.

By stat. 1 *G*.4. *c*.58. § 17. No person shall carry on or be concerned in the trade of a retail stationer or dealer in paper, millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard or scaleboard, at any paper or pasteboard mill, nor shall any maker of paper carry on or be concerned in the business of a retail stationer or dealer in paper in any premises within the distance of one mile of any mill for the making of paper, millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard or scaleboard, wherein he is concerned, on pain of forfeiting 200*l*. 1 G.4. c.58. Stationer not to carry on business at a mill or in any premises within one mile of any mill on penalty of 200*l*.

By stat. 42 *G*.3. *c*.94. § 15. All paper, pasteboard, millboard, scaleboard, and glazed paper, made in *G. B.* or in *Ireland*, and imported from thence, shall be made up by the maker thereof in this manner, (that is to say), all such paper, as soon as made, shall be made up into quires, each quire to consist of 24 sheets, and such quires shall be forthwith made up into reams of 20 quires each; and all such pasteboard, millboard, scaleboard, and glazed paper respectively shall, when made, be forthwith made up in regular parcels, each parcel containing even dozens of sheets of one and the same denomination and of equal dimensions, and not less than 24 nor more than 72 such sheets in each parcel; and every maker shall by himself or servant cause all such paper, pasteboard, &c. to be immediately tied up in wrappers conformably to the directions of 34 *G*.3. *c*.20. § 7, &c. [*see post*, p. 223.] and shall without delay mark on each wrapper, in large legible characters 42 G.3 c.94. Paper, pasteboard, &c. to be made up as herein directed.

42 G.3. c.94. and words at length, the class of the paper enclosed, distinguishing in which of the two classes the duty in respect of such paper is chargeable, together with the number of the ream according to the number of such reams of each such class, made by such maker at such mill during the current quarter, to be computed from *January* 5, *April* 5, *July* 5, and *October* 10, as the case may require, in such year, such number to be taken progressively, beginning 1, 2, and so onwards, according to the number of reams of each class made at such mill in each such quarter; and on each such parcel of pasteboard, &c. there shall in like manner, as soon as tied up as before directed, be marked in like manner the true description of such parcel, and whether the same be pasteboard, millboard, scaleboard, or glazed paper, and the number of sheets in each parcel, together with the progressive number of such parcel of pasteboard, &c. made by such maker at his mill or manufacture during the then current quarter, commencing as aforesaid; and if any maker of paper, pasteboard, &c. shall neglect or refuse so to make and tie up, and denominate for 24 hours after such paper, pasteboard, &c. shall be made; or after the same is tied up and marked, and before it is charged, shall untie or take the same out of the wrapper, or otherwise alter any reams or parcels, or the denominations or numbers marked thereon or on the wrappers; or shall conceal or remove any such paper, pasteboard, &c. from the mill room or other place entered for making, laying, or keeping the same; every such maker shall for each offence forfeit 200*l.*, together with all such paper, pasteboard, &c. which shall be seizable: provided, that every maker may make his paper into quires without folding the same, such quires, when made up into reams, being separated by a slip of coloured paper placed between each quire, and visible on the outside of the ream; and provided also, that the outside quires of each ream consist of not less than 20 nor more than 24 sheets, at the option of the maker.

On penalty of 200*l.* and forfeiture of the paper, &c.

Paper may be made into quires, &c.

Outside quires.

Paper may be cut as herein directed.

§ 16. Any maker of paper may divide with a knife or other instrument, before such paper shall be put up in reams, provided that the quantity upon which the duty is chargeable be not diminished thereby, and that all paper so divided shall, on the outside of the wrapper, be distinguished by the words "*cut paper*" being written or printed thereon in large legible characters.

56 G.3. c.103. By stat. 56 *G*.3. *c*.103. § 3. It shall be lawful for any maker to cut the edges of paper, millboard, button-board, button paper, glazed paper, sheathing paper, or pasteboard, before the same is tied up in reams or parcels: but if paper be divided with a knife before tied up, each piece into which such paper shall be so divided shall be deemed a sheet of the ream into which it shall be tied up: and every maker shall distinguish each ream of divided paper, by writing or printing in large legible characters, and words at length on the label, the words *cut paper*, and the number of pieces into which each sheet has been divided, and shall keep such paper separate from all uncut paper, and from all millboard, button-board, button paper, glazed paper, sheathing paper, and pasteboard; and if any maker shall neglect to distinguish paper so divided as aforesaid; or to keep the same separate, he shall forfeit 50*l.*

34 G.3. c.20. Notice of weighing.

By stat. 34 *G*.3. *c*.20. § 7. Every maker of paper, pasteboard, &c. whose mill or work-house is situate in any city or market town, who shall have any paper, &c. to be weighed and charged with the duty, shall give twenty-four hours' (elsewhere forty-eight hours') previous notice in writing of the time and hour of day to the officer of excise, who shall attend; and such maker or his servant shall produce to such officer, so soon as he shall attend, the whole thereof, tied up in the manner following, (viz.) all such paper shall be inclosed and tied up with strong thread or string in covers, containing one ream or bundle each, and not more or less; and all such pasteboard, millboard, scaleboard, and glazed paper shall be tied up with strong thread or string in such parcels as aforesaid; and the different parts of such thread or string shall pass over and cross each other at the middle of the ream or bundle; and where the different parts of such string shall cross each other, the same shall be passed from thence over and across the ends and sides of such ream or bundle; and if such maker shall not at the time and hour mentioned in such notice produce to such officer all the paper, pasteboard, &c., for which any duty is to be charged, tied up, and the proper class and other matters before described (42 *G*.3. *c*.94. § 15., p. 221, 222.) marked thereon, such notice shall be void, and he shall be obliged to give a fresh and like notice before any account shall be taken or the duty charged, and before he shall remove the same from the mill where made.

Paper, &c. how to be tied up.

56 G.3. c.103. Makers to mark the weight on the label affixed to every ream of paper or parcel of pasteboard.

§ 5. Every maker shall write or print in large and legible characters upon the label herein-after mentioned, affixed on every ream of paper, and upon every parcel of millboard, button-board, button paper, glazed paper, sheathing paper, or pasteboard, the weight of such ream or parcel; and if any such maker shall neglect so to do, or if any such ream of paper or parcel shall, on being reweighed by any officer of excise, be found to weigh less or more than five *per cent.* under or over the weight so marked, written, or printed on such ream or parcel, the same shall be forfeited, and shall be seized by any officer of excise; and the maker shall forfeit 50*l*.

Penalty.

1 G.4. c.58. Weight of paper to be put in words, joining to it *lbs.* or *pounds* on the label to be affixed on the wrapper of every [illegible] of paper, &c.

By stat. 1 *G*.4. *c*.58. § 5. Every maker shall, in writing or printing on every ream of paper, and parcel of millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard and scaleboard, as required by stat. 56 *G*.3. *c*.103., the weight thereof (*a*), write or print the same in words at length, joining thereto *lbs.* or *pounds*, and shall write or print the same on the label affixed on the wrapper of every ream or parcel; and if such maker shall neglect so to do, as soon as such ream or parcel is tied up in the wrapper, at or before the time when such ream or parcel is produced to be weighed or charged by the officer with duty; and if any ream or parcel shall, on being reweighed by any officer of excise, be found to weigh under or over the weight so marked five *per centum*, if the weight of the ream or parcel exceed twenty pounds, or ten *per centum* if twenty pounds or less weight, the same shall be forfeited, and may be seized by any officer of excise, and the maker shall forfeit 100*l*. for every such ream or parcel.

Penalty on neglect, or if paper, &c. be found to be under the weight marked, forfeiture and 100*l*. for every ream or parcel.

One of such labels shall be pasted on the

§ 6. The maker shall, before he tie up any ream of paper or parcel of millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard, or scaleboard, fix with paste and

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(*a*) *Sic.*

1 G.4. c.58.

wrapper, that when the ream is tied up, the label shall be on the top with the end thereof, for receiving the impression of the departure stamp.

Class and weight to be put on such label by the maker, and when the officer weighs the paper, &c. shall put thereon the progressive number on such ream, &c. and the quarter and year when weighed.

Officer to write on such label the day of the month and afterwards stamp the ream or parcel.

How quarters shall be distinguished.

Penalty on maker destroying such label, making false entry thereon, using it on any other wrapper, tying up paper, &c. in any wrapper without such label; and not marking on it the particulars before mentioned, &c. 200*l.*

glue, or paste or glue on one of the wrappers, one of the labels herein mentioned, and press the same so that such label be firmly fixed and dried thereon; and shall tie up every ream and parcel in a wrapper or wrappers, on or to one of which such label shall be fixed and dried, and which label when the ream and parcel is so tied up, shall be on the top of every ream and parcel, with the end thereof, for receiving the impression of the departure stamp, on the side of such wrapper, or the label shall be affixed on such part of the wrapper as the commissioners of excise in *England* shall order; and the maker shall, after the ream or parcel is so tied up, write or print on such label the class of paper, and the denomination and the number of dozens of sheets of millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard, or scaleboard, contained in such wrappers, and the weight of such ream or parcel; and when the officer of excise shall weigh any paper, &c. for stamping and charging the same with duty, the maker shall write on such label the progressive number of each ream and parcel as and when the same is put into or taken out of the scale, and the quarter and year in which the same is weighed; and such officer shall write upon such label the day of the month in which the ream and parcel is weighed, and sign his name, and stamp the same with the stamp denoting the charge of duty, on the top of every ream or parcel, part of the stamp being on the label and part on the wrapper, and shall also stamp every ream and parcel on each side across the edges of the upper and lower wrappers where they join or overlap; and for regulating such progressive number, the year shall be divided into four quarters, commencing on the 6th *July*, 11th *October*, 6th *January*, and 6th *April*, numbered first, second, third, and fourth quarters, and such progressive numbers shall be renewed with every quarter; and if any maker of paper, &c. shall obliterate or destroy any such label, or make any false entry thereon, or shall use any such label, or the wrapper on which the same has been fixed, to cover or tie up any other paper, &c. than that contained in such wrapper, with such label when first tied up and charged with duty; or shall take off any label from the wrapper, or shall tie up any ream or parcel of paper, &c. in any wrapper, without such label, or on one of which wrappers he shall not have, before such ream or parcel was tied up, fixed one of such labels as aforesaid, or shall not write on such label the class of paper, and denomination and number of dozens of sheets of millboard, &c. contained in such wrapper, and the weight of such ream or parcel in manner required by this act; or shall not when such ream or parcel is weighed, write on such label the progressive number of such ream or parcel, and the quarter and year in which the same is weighed; or shall sell or send out any paper, &c. without being so tied up and labelled; or shall not, on demand of any supervisor, or officer of excise of equal rank, deliver all such labels delivered to such maker as shall be above the number for which such maker has produced to the officer, to be taken account of, reams of paper, or parcels of millboard, &c. such maker shall, for every such label, wrapper, ream, and parcel, forfeit 200*l.*

Maker shall fix an impression thereof on the

§ 7. Every maker shall before he send out or remove from his mill any paper, &c. distinctly fix an impression with printers' ink of such departure stamp on such part of the label of every ream

of paper, and of every parcel of millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard, or scaleboard, as shall be prepared or directed by the commissioners of excise of *England* for that purpose, and on each side of every wrapper on which the label is fixed, near to and above the duty stamp, and which impression shall contain the number of the day, month, and year on which the same was fixed; and if any maker or his servant shall not before he send out or remove any paper, &c. affix on the label and wrapper thereof such impression of the departure stamp; or if any ream of paper, or parcel of millboard, &c. having such impression on such label and on the wrappers thereof, shall be found in the possession or entered premises of any such maker (not being paper, &c. received by such maker from some other mill, or returned from his customers, and of which notice shall be given as herein mentioned) after the expiration of twenty-four hours after the date of such impression, *Sundays* excluded; or if any label or wrapper having thereon such impression of a departure stamp, and not containing paper, &c. shall be found in the possession or on the entered premises of any such maker; or if any paper, &c. shall be found removing or removed from any such mill, or in the possession of any stationer or dealer in paper (not being broken reams or parcels for immediate sale) without being inclosed in a wrapper so labelled, and with such impressions of a departure stamp thereon, and on the wrappers thereof, every such label, wrapper, ream, parcel, paper, millboard, &c. shall be forfeited, and may be seized by any officer of excise; and every such maker and person removing, or who has removed, or been concerned in the removal or receipt of any such paper, &c.; and every stationer, dealer, or person in whose possession such paper, &c. shall be found, shall forfeit 200*l.* for every such ream and parcel.

1 G.4. c.58. — label of every ream of paper, &c. before the same is sent out of the mill, and on each side of the wrapper. Penalty for not giving receipt for the stamps; or for not using it as directed; or for having paper, &c. in possession for 24 hours after being so stamped; or for removing paper, &c. without such departure stamp; forfeiture of paper, &c. and 200*l.* for every ream and parcel.

By stat. 34 *G.3. c.*20. § 10. As soon as the officer is satisfied that the conditions in this act specified have been complied with, he shall stamp or mark every ream and bundle of paper, and parcel of pasteboard, &c. to denote the duty, or shall affix on every such bundle or parcel a proper label, to denote the duty being so charged, and shall write his name upon each, together with the date, day, and year, on which the duty was charged; and if any person shall wilfully deface, obliterate, or alter the same, or any part thereof, or any impression of any such stamp or mark, he shall forfeit 50*l.* for every such offence.

34 G.3. c.20. Directions for stamping paper. Defacing marks.

By stat. 56 *G.3. c.*103. § 6. On the label when perfectly dry, but not before, shall be impressed by the officer after he has weighed such paper, &c. part of the stamp to denote the charge of duty, the other part being impressed upon the wrapper of the ream of paper, or upon the larger piece of paper to which the label is affixed upon each parcel of millboard, button-board, button paper, glazed paper, sheathing paper, or pasteboard.

56 G.3. c.103.

By stat. 34 *G.3. c.*20. § 11. Any officer may open any such ream or bundle of paper, and take out a sample not exceeding one sheet out of each quire (paying a market price for the same if demanded); and if he shall discover therein any paper of a different class than that which shall be denominated on the cover, the same shall be forfeited and may be seized; and the

34 G.3. c.20. Officers may take samples.

34 G.3. c.20.

person who shall have marked any such false class shall forfeit 50*l*. for every such offence.

Stamps to be provided, and penalty of counterfeiting the same, or selling with forged stamps.

By § 8. The respective commissioners of excise shall provide proper stamps or labels for stamping or marking paper, pasteboard, millboard, scaleboard, and glazed paper made in *G. B.*, and cause them to be distributed to the officers; and the said stamps or labels may be altered from time to time, as the said commissioners shall think fit.

§ 9. If any person shall counterfeit, or cause to be counterfeited, any stamp, device, or label provided or directed to be used in pursuance of this act, or the impression of any such stamp upon any wrapper of, or belonging to, or used with or upon any label affixed to any ream or quantity of paper, or upon any pasteboard, millboard, scaleboard, or glazed paper; or shall have in his possession any such counterfeit stamp, knowing it to be such; or shall have in his possession, or sell any paper, &c. with a counterfeit impression of any such stamp on the wrapper, or on any label affixed thereto, knowing it to be such; or shall, upon any paper not duly charged, knowingly put any wrapper, having thereon such counterfeit impression or label; he shall forfeit 500*l*.

47 G.3. sess.2. c.30.

By stat. 47 *G.3. sess.2. c.30.* § 13. So much of stat. 34 *G.3. c.20.* § 9. as respects the penalty for counterfeiting, or causing to be counterfeited any stamp, device, or label directed to be used for paper, &c. shall be repealed.

1 G.4. c.58. Commissioners of excise to issue to the supervisor of the district, a sufficient number of labels to be used; with which the officer shall supply the maker.

By stat. 1 *G.4. c.58.* § 6. The commissioners of Excise in *England* and *Scotland* shall issue to every supervisor in whose district any paper mill shall be situated, a sufficient number of labels, of such form as to the commissioners of excise in *England* shall seem fit for the purposes herein mentioned: and every maker of paper, &c. shall, on his request in writing to the proper officer of excise, specifying the number of labels he has need of, be within eight days after such notice supplied by the officer with the labels, signed by the supervisor of the district, and marked by him with the number or letter by which the mill of such maker is distinguished by the book or paper delivered to him and then in use: and such maker, or his servant, shall acknowledge on the back of the request note, the receipt of such number of labels.

Departure stamps to be issued.

By § 7. and 8. The commissioners of excise in *England* and *Scotland* shall issue to every supervisor in whose district any paper-mill shall be situated, a sufficient number of stamps or dies, of such form as to the commissioners of excise in *England* shall seem fit, for the purpose herein mentioned, having moveable figures therein, denoting the day, month, and year, to be called a *Departure Stamp;* and every such maker shall, on his request in writing to the proper officer of excise, have delivered to him one of such stamps or dies, the receipt whereof shall be acknowledged on the back of the request note by such maker or his servant, on pain of forfeiting 200*l*.: and every maker to whom any departure stamp has been delivered, shall, upon demand by any supervisor or officer of excise of equal rank, deliver back such stamp, with every figure, letter, and part thereof, or therewith used, on pain of forfeiting 50*l*.

One to be delivered to every maker, who shall deliver up the same to the supervisor when required.

Penalty on persons counterfeiting stamps,

§ 13. If any person shall counterfeit, or cause to be counterfeited, any stamp, die, or label, or any figure, letter, or part of any stamp, die, or label, provided in pursuance of this or any other

act for securing the duties on paper, millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard, and scaleboard, or shall have in his possession any such counterfeit stamp, die, label, figure, letter, or part of such stamp, die, or label, knowing it to be counterfeited; or shall upon any wrapper used with any quantity of paper, &c., or upon any such label counterfeit the impression of any such stamp, die, or device, or of any figure, letter, or part thereof, or knowingly have the same in his possession; or have in his possession, or sell, any paper, &c. with a counterfeited impression on any such stamp, &c. on the wrapper, or on any label affixed thereto, or upon any wrapper thereof, or with any counterfeit label, figure, letter, or part of such label, or counterfeited printing or writing on any such label, knowing the same to be counterfeited; or shall on any paper, &c. put any wrapper or label, or part of any wrapper or label having thereon any counterfeit writing, printing, letter, figure, mark, or impression, knowing the same to be counterfeited; or shall upon any ream or parcel of paper, &c. not charged with duty, put any stamp or impression used in pursuance of this or any other act; every person so offending shall, for every counterfeit stamp, die, label, figure, letter or part of such stamp, die, or label, forfeit 1000*l*., and for every such wrapper, ream or parcel 500*l*.; and every such counterfeited stamp, die, and label, figure, letter, and part of such stamp, die, or label, and every counterfeit impression, and every such wrapper, ream, and parcel, shall be forfeited, and may be seized by any officer of excise. 1 G.4. c.58. &c. used for securing the duties on paper, &c. having them in possession; using them on wrappers or labels; or selling paper, &c. with counterfeit stamps, &c. 1000*l*., and for every wrapper, &c. 500*l*.

By stat. 34 *G*.3. *c*.20. § 9. If any person shall knowingly wrap or cover any paper in any wrapper used before, or shall knowingly affix, tie up, or add any pasteboard, millboard, scaleboard, or glazed paper, having thereon the impression of any such stamp or label, whether such stamp or label be true or counterfeit, to any pasteboard, &c. which has not been duly charged, he shall forfeit 500*l*. 34 G.3. c.20.

By stat. 52 *G*.3. *c*.143. § 7. If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any mark, stamp, die, or plate which in pursuance of any act or acts of parliament shall have been provided, made, or used by or under the direction of the commisioners appointed to manage the duties on stamped vellum, parchment, and paper, or by or under the direction of any other person or persons legally authorized in that behalf, for expressing or denoting any duty or duties, or any part thereof, which shall be under the care and management of the said commissioners, or for denoting or testifying the payment of any such duty or duties, or any part thereof, or for denoting any device appointed by the said commissioners for the ace of spades to be used with any playing cards; or shall forge or counterfeit, or cause or procure to be forged, or counterfeited, the impression, or any resemblance of the impression of any such mark, &c. &c. as aforesaid, upon any vellum, parchment, paper, card, ivory, gold, or silver plate, or other material; or shall stamp or mark, or cause or procure to be stamped or marked any vellum, parchment, paper, card, ivory, gold, or silver plate, or other material, with any such forged or counterfeited mark, &c. &c. as aforesaid, with intent to defraud his majesty, his heirs or successors, of any of the duties, or any part of the duties under the care and management of the said 52 G.3. c.143. For forging stamps on paper, &c.

52 G.3. c.143. commissioners; or if any person shall utter or sell, or expose to sale, any vellum, parchment, paper, card, ivory, gold, or silver plate, or other material having thereupon the impression of any such forged or counterfeited mark, &c. &c. or any such forged or counterfeited impression as aforesaid, knowing the same respectively to be forged or counterfeited; or if any person shall privately or secretly use any such mark, &c. &c. which shall have been so provided, made, or used by or under such direction as aforesaid, with intent to defraud H. M., his heirs or successors, of any of the duties, or any part of the duties under the care and management of the said commissioners; every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Punishment for making frames used in the making of paper.

By § 9. If any person (not being lawfully appointed or authorized so to do) shall make, or cause or procure to be made, or shall knowingly aid or assist in the making, or without being so appointed or authorised as aforesaid, shall knowingly have in his, her, or their custody or possession, without lawful excuse (the proof whereof shall lie on the person accused), any frame, mould, or instrument for the making of paper, with the words 'excise office' visible in the substance of such paper, or shall make or cause or procure to be made, or knowingly aid or assist in the making any paper in the substance of which the words 'excise office' shall be visible; or if any person (except as before excepted) shall by any art, mystery, or contrivance, cause or procure the said words 'excise office' to appear visible in the substance of any paper whatever; or if any person (not being so appointed or authorized as aforesaid,) shall engrave, cast, cut, or make, or shall cause or procure to be engraven, &c. any mark, stamp, or device in imitation of, or to resemble any mark, stamp, or device made or used by the direction of the commissioners of excise in *England* or *Scotland*, or the major part of them respectively, for the purpose of printing, stamping, or marking of any paper to be used as or for a permit or permits, to accompany any exciseable commodity or commodities removing or removed from one part of *G. B.* to any other part thereof, in pursuance of the directions of any of the several statutes requiring such permit, he shall, on conviction thereof, be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

56 G.3. c.103. Entries to be made at the excise office every six weeks of all paper, &c. charged within that period, and to be verified on oath.

By stat. 56 *G.*3. *c.*103. § 8. Every maker shall once in every six weeks make a true entry in writing, at the office of excise within the limits whereof such paper, &c. shall be made, of all paper, millboard, buttonboard, button paper, glazed paper, sheathing paper, and pasteboard, charged on him within such period, in which entry the number of reams and parcels of such paper, &c. distinguished by the different classes, denominations, and kinds of each, and the weight of each day's charge respectively, shall be inserted day by day as the same is stamped by the officer: and such entries shall be verified upon oath by such maker or his chief workman or servant employed in making the same; and such maker shall thereupon further make oath, that no other paper, &c. than is mentioned therein has been, within such period of six weeks, (except such as may have been previously taken an account of and charged with duty,) by him removed or sent from his premises, on pain of forfeiting 100*l.*;

which oaths the several collectors and supervisors of excise are to administer.

By stat. 1 *G.4. c.*58. § 1. Every maker shall, from day to day, enter in a book, or on a paper to be delivered to him by the officer of excise, and kept by such maker in some public or open part of his entered premises, the number of reams and quires of paper, and the number of dozens of sheets of millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard and scaleboard, distinguishing the class of the paper, and the denomination of millboard, &c. made daily, with their respective estimated weight, reckoning twenty six sheets of paper, (two of them being allowed for waste or damaged paper), for a quire consisting of twenty four sheets when dried and finished, and thirteen sheets (one being allowed for waste) for a dozen sheets of millboard, button-board, button paper, glazed paper, and sheathing paper, when dried and finished; and shall make such entries of each day's work at his mill, before twelve at noon of the following day; which entries shall, at the end of every six weeks, be delivered to the proper officer by, and verified by the signature of such maker, or his chief workman or foreman: And if any such maker shall neglect to make such entry, or shall knowingly make in such book or paper any false entry, or shall remove, conceal, or destroy any such book or paper, or fail to keep the same in some open or public part of his entered premises, or keep the same from the officers surveying his manufactory, or obstruct or prevent them from examining the same, and comparing the entries therein with his stock, or shall erase, deface, or alter any entry therein, or shall on demand, neglect to deliver in a perfect state any such book or paper, at the end of six weeks, or other period for which it has been delivered to him, or to verify the same by such signature, such maker shall forfeit 200*l.*

1 G.4. c.58. Maker to enter in a book the quantity of paper, &c. made by him daily.

Entries to be delivered to the officer every six weeks verified on oath.

Penalty on maker neglecting entry, or making a false entry, &c. 200*l.*

By stat. 10 *Ann. c.*19. § 4. 34 *G.*3. *c.*20. § 12., and 56 *G.*3. *c.*103. § 8. no such maker shall be obliged to go farther than the market town next to the place where the paper, &c. shall have been made, for the making of such entries.

10 Ann. c. 19. 34 G.3. c. 20. 56 G.3. c. 103.

By stat. 56 *G.*3. *c.*103. § 9. If the quantity of paper, millboard, button-board, button paper, glazed paper, sheathing paper, or pasteboard, contained in such entries, added to the uncharged stock of the maker, shall at any time be found to be less than five *per cent.* under the account kept of the quantity daily made, it shall be lawful for the officers of excise to charge such maker with the duties on such deficiency as shall be below five *per cent.* as aforesaid, according to the average weight of the paper, &c. so missed and uncharged.

56 G.3. c. 103.

By stat. 1 *G.*4. *c.* 58. § 19. No maker of paper, millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard or scale-board, shall, on comparing the quantity thereof inserted in the entries, added to the uncharged stock of such maker, be charged with duties on any deficiency of paper, &c. unless the deficiency in such entries, added to the uncharged stock, shall be more than ten *per centum* below the account kept of the paper, &c. daily made.

1 G.4. c.58. No charge of duty for deficiency shall be made unless, &c.

And by stat. 34 *G.*3. *c.*20. § 13. Every maker shall, within six weeks after he shall make or ought to have made such entry, pay the duties, on pain of forfeiting double duty.

34 G.3. c.20. Duties, when paid.

34 G.3. c.20. 42 G.3. c.94. Paper not to be removed until an account be taken.

By stat. 34 *G.*3. *c.*20. § 14. and 42 *G.*3. *c.*94. § 15. No maker shall remove or suffer to be removed from the mill where the same shall be made, any paper, &c. until such officer shall have taken an account thereof; nor shall remove any paper in any less quantity than a ream or bundle, nor without having thereon the cover in which the same was charged with the duty; nor shall remove any such pasteboard, millboard, scaleboard, or glazed paper, in any less quantity than the entire parcel in which the duty was charged, nor until weighed and charged, and stamped, marked, or labelled as aforesaid, nor the paper without having thereon the cover, nor the paper, pasteboard, &c. without the stamp or label, nor without the officer's name, together with the day and year when the duty was charged, and the several matters hereinbefore prescribed, marked, or fixed on such cover, or on such pasteboard, &c. on pain of forfeiting the same, and also 50*l.* for every such offence, together with the package containing the same, and the horses, cattle, carriages, boats, barges, or other vessels, used in removing thereof, which may be seized by any officer of excise.

34 G.3. c.20. When to be removed after weighing, and to be kept separate.

By stat. 34 *G.*3. *c.*20. § 15. No maker shall remove any paper, &c. from the mill or other place where the same shall have been weighed and the duty charged, in less than twenty-four hours; and every maker shall keep such paper, &c. which shall have been so weighed, separate from other paper, &c. for twenty-four hours, unless sooner re-weighed by the surveyor or supervisor, on pain of forfeiting 50*l.* If, upon re-weighing, any additional weight shall be found, the same shall be charged with the duty according to such weight.

May be removed from one mill to another, on giving notice.

§ 16. Nothing in this act shall prevent any maker from sending paper from the mill where made, upon giving forty-eight hours' notice in writing to the officer, to any other mill to be sized or finished, in order that such officer may attend and take an account thereof; and provided that the same be removed with a proper certificate from such officer; and that when so removed to such mill, the same shall be under the like directions, as to stamping and other matters, as if it had been finished and sized at the mill where made; and such maker shall for the breach of any of the directions aforesaid, be subject to the like penalty as he would have been if such paper had not been removed.

56 G.3. c.103.

By stat. 56 *G.*3. *c.*103. § 7. Every maker of paper, millboard, button-board, button paper, glazed paper, sheathing paper, or paste board, when he shall receive at his entered premises any paper, &c. which has been made or charged with duty at any other mill, or which has been returned to him from any customer or other person, shall write or print on and distinguish every such ream or parcel with the number or letter by which the mill is distinguished, and at which the same was manufactured, and from whence received, or with the words *returned paper*, (as the case may be,) and shall keep all such paper, &c. separate from each other, and from all other paper, &c. on pain of forfeiting 50*l.*

1 G.4. c.58. Paper, &c. returned shall be

By stat. 1 *G.*4. *c.*58. § 9. When any maker shall receive into his possession, or have delivered on his entered premises, paper,

millboard, button-board, button paper, glazed paper, sheathing paper, pasteboard or scaleboard, charged with duty at any other mill, or sent out by such maker, and returned from any customer, he shall write or print on, and distinguish every ream or parcel, with the number or letter by which the mill is distinguished at which the same was made, or with the word "*returned*," as the case may be; and shall keep all such paper, &c. separate from each other, and from all other paper, &c., and shall, on the next visit of his surveying officer, give him notice in writing thereof, specifying the progress ve number and weight of each ream or parcel, the number of the mill where made, the date of charge, the date of departure stamp, and the person from whom, and place from whence, and day when received; and shall then produce to the officer all such paper, &c. and assist him in taking an account thereof: and such maker shall, before he remove any such paper, &c. write or print on the label of the wrapper, the number of his mill, and fix such impressions of the departure stamp as directed in case of paper made at his mill: and if any such maker shall neglect to give such notice, or shall give a false notice, or neglect to produce all such paper, &c., or to assist the officer, or to comply with any other of the directions aforesaid, he shall forfeit 100*l.* for every such ream or parcel; and the same shall be forfeited, and may be seized by any officer of excise.

1 G 4. c.58. — marked with the number or letter by which the mill is distinguished, or with the word 'returned;' and be kept separate, and notice given to the officer who shall take an account thereof; and on being removed the departure stamp shall be affixed. Penalty 100*l.* for every ream or parcel where directions are not complied with.

By stat. 34 *G.*3. *c.*20. § 17. Every maker shall keep all paper, &c. which hath been charged and stamped, marked or labelled, apart from all paper which hath not been charged and stamped, marked or labelled, and also all paper of one class separate from paper of another class, on pain of forfeiting 50*l.*

34 G.3. c.20. Paper stamped to be kept separate.

§ 18. It shall be lawful for any officer of excise, by day or night, (but if in the night in the presence of a constable,) to enter into any mill, workhouse, or other place entered or made use of by any maker of paper, &c. and by weighing, tale, or otherwise to take an account of the kinds and quantities of paper, &c. which shall have been made, and shall make a report thereof in writing to the commissioners of excise, or whom they shall appoint, leaving a copy of such report under his hand with such maker (if demanded in writing); and such report shall be a charge upon such maker; and if such officer shall refuse to give or leave a copy of his report in writing at the time of taking such account (being demanded as aforesaid), he shall, for every such offence, forfeit 40*s.* to such maker.

Officers may enter and take an account.

By stat. 10 *Ann.* *c.*19. § 50. The officers shall be permitted to take an account of the rags, cordage, and other materials for making paper, pasteboard, millboard, and scaleboard, and of the paper for printing, painting, or staining, and of the respective proceedings in making, printing, painting, or staining thereof.

10 Ann. c.19.

By stat. 1 *G.*4. *c.*58. § 3. It shall be lawful for the officers of excise, when occasion shall require, or they may think fit, to take account of the stock of paper, millboard, buttonboard, button paper, glazed paper, sheathing paper, pasteboard, and scaleboard, and of the quantities of each in the possession of the makers thereof: and every such maker shall at all times place and keep his stock of paper, &c. charged with duty, separate from that

1 G.4. c.58. Officer to take an account of stock.

Maker to keep the different

1 G.4. c.58.

classes of paper, &c. charged with duty from that not charged, so as the officer may easily see the departure stamp, and take account of number and weight of the reams, &c.

Penalty on obstructing officer, &c. 100*l*.

which has not been charged, and also distinct according to its class or denomination, and shall keep the stock charged with duty so that the officer may without difficulty see the departure stamp thereon, and take an account of the number of reams of paper and parcels of millboard, buttonboard, button paper, glazed paper, sheathing paper, pasteboard, and scaleboard, charged or uncharged, and the weight thereof, with the assistance of such maker, or a sufficient number of his servants, which assistance the maker, at the request of the officer, is to give to the utmost of his power: and if any such maker, or other person shall obstruct or hinder any officer of excise in inspecting or taking such account, or shall neglect, when required, to give such assistance, or to keep his stock in the manner aforesaid, or conceal any part thereof, every such maker or person so offending shall forfeit 100*l*.

34 G.3. c.20. Maker to keep scales and weights;

By stat. 34 *G*.3. *c*. 20. § 19. Every maker shall keep sufficient and just scales and weights, and shall permit such officer to use the same; and if he shall not keep such, or shall not so permit, or shall use any false or insufficient scales or weights, or practice any device to prevent such officer from taking the true weight, he shall for every such offence forfeit 100*l*. together with such insufficient scales and weights, which may be seized by any officer of excise.

And to assist in weighing.

§ 20. And every maker, when required by such officer, shall, with a sufficient number of his servants, assist in weighing and taking an account, and in re-weighing, on pain of forfeiting 50*l*.

Turn of the scale.

§ 21. 22. In weighing, the turn of the scale shall be in favour of the crown, and in lieu thereof there shall be allowed to the maker 2lbs. upon every 100lbs. and so in proportion for a greater or a lesser quantity, provided that no weight less than 1lb. shall be used, on pain of forfeiting such allowance.

Not less than 1lb. to be used.

Paper, &c. fraudulently hid, to be forfeited.

Officers may search.

§ 23. In case any paper, pasteboard, &c. shall be fraudulently hid or concealed, the same shall be forfeited, together with the packages containing the same, which may be seized by any officer of excise. And if any such officer shall suspect that any such paper, &c. is hid or concealed in any place within the limits of the chief office in *London*, upon oath made before two commissioners or one justice for the county, city, or liberty where such place shall be, or if in any other part of *G. B.*, then before one justice of the county or place where such officer shall suspect the same to be deposited or concealed, such commissioners or justice may, if they judge it reasonable, by special warrant, empower such officer by day or night, (but if in the night in the presence of a constable) to enter such suspected place, and to seize and carry away all such paper, &c. as they shall there find so forfeited, together with the package containing the same; and the person in whose custody the same shall be found shall forfeit 50*l*.

Stationers not to receive paper but in an entire ream, &c.

§ 24. No stationer or dealer in paper shall receive into his possession any paper made in *G. B.* which shall not, at the time of receiving it, be an entire ream or bundle, [ream by stat. 42 G.3. c.94. § 15.] and inclosed in a wrapper stamped or labelled as aforesaid, together with the officer's name, and day and year when the duty was charged, and the class marked thereon, on pain of forfeiting 50*l*. together with such paper, which may be seized by any officer of excise.

§ 25. and stat. 1 *G.4. c.*58. § 11. No stationer or dealer in paper, millboard, button-board, button-paper, glazed-paper, sheathing-paper, pasteboard, or scaleboard, nor any other person, shall return to any maker of paper, &c. nor to any mill, workhouse, or place to him belonging, nor to any other place, to or for the use of any such maker, any wrapper or label which has been before used as a wrapper or label to any paper, &c. and marked with the stamps or impressions directed by this act: but every such stationer or dealer, or other person, shall, upon opening any ream or parcel of paper, &c. forthwith cancel and obliterate the label and the stamps and impressions thereon, and on the wrappers, without taking such label from the wrapper: nor shall any maker of paper, &c. receive any such wrapper or label which has been before used as a wrapper or label to any quantity of paper, &c., or in or with which any paper, &c. has been removed by any maker, on pain that every such stationer, dealer or maker, or other person offending, shall forfeit (100*l.* by 34 *G.*3., 200*l.* by 1 *G.*4.) for every such wrapper or label which shall be forfeited, and may be seized by any officer of excise.

34 G.3. c.20. 1 G.4. c.58. Stationers not to return wrappers to makers, but shall cancel them.

Makers not to receive such wrappers.

Penalty 200*l.*

By stats. 34 *G.*3. *c.*20. § 26., and 1 *G.*4. *c.*58. § 11. Nothing herein shall extend to inflict the said penalty of (100*l.* by 34 *G.*3., 200*l.* by 1 *G.*4.) for not destroying or returning any wrapper which hath been opened, containing therein the same paper, &c. which was removed by the maker, and which is returned to him as disliked, or for not destroying or returning any label affixed to such wrapper.

Not to extend to wrappers returned with paper, &c. disliked on opening and refused.

By stat. 1 *G.*4. *c.*58. § 16. Every retailer, stationer, or dealer in paper, or other person who shall have bought or agreed for any paper, millboard, button-board, button-paper, glazed-paper, sheathing-paper, pasteboard, or scaleboard, forfeited or liable to seizure, and shall inform any officer of excise of the same, shall, on the condemnation thereof, and conviction of the offender in the penalties, be paid by the officer seizing, the value of the paper &c. so seized and condemned, and for which he shall have paid, or be liable to pay, and shall pay, and such payment shall be deemed a part of the expences attending such seizure.

1 G.4. c.58. Persons buying paper liable to seizure shall, on giving information, receive the value paid by them.

By stat. 56 *G.*3. *c.*103. § 20., after reciting that by 34 *G.*3. *c.*20. § 25. stationers and dealers in paper, upon opening any ream or bundle of paper, are required to destroy the wrapper in which it was inclosed; and that by reason of the stamp or impression directed by this act being put upon a label only, it is not requisite, for security of the duty on paper, to destroy the wrapper or cover in which any such paper was inclosed, it is enacted, that so much of the said act of 34 *G.*3. shall be repealed.

56 G.3. c.103. So much of 34 G.3. c.20. as requires the destroying of wrappers on opening bundles, repealed.

By stat. 34 *G.*3. *c.*20. § 27. All paper, pasteboard, millboard, scaleboard, and glazed paper, and all materials and utensils for the making thereof in the custody of the maker, or other person in trust for him, shall be chargeable with all debts and duties for paper in arrear and owing by such maker, aud shall also be subject to all penalties and forfeitures incurred for any offence against this act. *See also* stat. 28 *G.*3. *c.*27. § 21.

34 G.3. c.20. Paper and utensils, &c. liable to the duty.

§ 35. If any question shall arise whether any paper is belonging to the class marked on the cover or wrapper, (although such paper

Proof of the paper being of

34 G.3. c.20.

the class marked to lie on the owner.

shall appear to have been entered in the officer's books as belonging to such class,) the proof thereof shall lie on the owner or claimant, and be decided by the oaths of two skilful and experienced persons.

Obstructing officers.

§ 36. If any person shall assault, oppose, molest, obstruct or hinder any officer in the due execution of this act, he shall forfeit 100*l.*

Oxford and Cambridge.

§ 37. 39. 40, 41. and 43 *G.*3. *c.* 69. *Sched.* (C). All paper of the first denomination used in printing books at *Oxford* or *Cambridge*, in Latin, Greek, Oriental, or Northern languages, and also bibles, testaments, psalm-books, or books of common prayer, printed either in those universities, or by the king's printer, shall have drawbacks allowed on certain conditions.

Saving for 32 G.3. c.54.

§ 47. Nothing herein shall extend to alter or affect the provisions contained in 32 *G.*3. *c.*54.

1 G.4. c.58. Paper, &c. destroyed by fire or wreck, maker on proving loss before quarter sessions or commissioners of excise, and that the duty was paid, may recover the duty on producing a certificate to the collector of excise.

By stat. 1 *G.*4. *c.*58. § 22. The provisions in stat. 34 *G.*3. *c.*20. § 49. respecting an allowance for damage sustained from the loss of paper, &c. arising from the sinking of vessels conveying the same, is repealed; and it is enacted, that if any quantity of paper, millboard, &c. shall be inevitably destroyed, or so far inevitably damaged by fire, or by the unavoidable wreck of, or other unavoidable injury to the vessel or barge, in which such paper, millboard, &c. shall be transporting, or be shipped on board to be transported, as that such paper, millboard, &c. shall be no longer capable of use, but must be wholly destroyed or re-manufactured and charged again with duty, it shall be lawful for the maker, being at the time the proprietor and owner, to make proof of such loss and the cause thereof, on the oath of one witness, and of the duty having been duly paid, before the justices of the county where such accident happened, or was first discovered, at the general quarter sessions, or before the commissioners of excise, who are to summon before them witnesses, under the penalty, for non-attendance, of 20*l.* (to be levied by distress and order of such justices or commissioners,) and to administer to such witnesses the oath before mentioned; and upon such proof being made by such witnesses, or by legal documents, that such paper, millboard, &c. was inevitably destroyed, or inevitably damaged, so far as aforesaid, and that the duties thereon were paid, to grant a certificate thereof, and of the amount of such duties; and upon the production of such certificate to the collector, he shall be obliged to pay or allow to such maker, being the proprietor, out of the duties coming into his hands, so much money as the sum certified to have been paid for the duty shall amount to: Provided that no such maker shall be entitled to any such relief or allowance, unless notice in writing of such accident, describing the nature, cause, and extent, shall be delivered to the supervisor within three days next afterwards, or unless such maker, or his agent, shall give or leave notice in writing with the supervisor or collector of the division where such quarter sessions shall be held, of the intention of such maker, being such proprietor and owner, to apply for such allowance or relief, or to the solicitor of excise where such application is intended to be made to such commissioners, fourteen days at the least before the beginning of such quarter sessions, or before such application to such commissioners, and shall apply for such relief

Notice of application to be given to the supervisor.

within one month after such loss, or at the next general quarter sessions after the expiration of such month. 1 G.4. c.58.

§ 23. Nothing in this act shall extend to repeal or alter any acts in force, except so far as such acts are repealed, altered, or controlled by this act. Other acts not affected, unless hereby altered.

By stat. 34 *G.3. c.*20. § 50. The person who shall sustain such loss shall, three days before such sessions, give or leave notice in writing thereof with the collector of excise of the district, and of his intention of applying to such sessions for such allowance. Notice of application for such allowance.

And all the duties are allowed for such glazed or other press papers for clothiers and hot-pressers as shall be *bonâ fide* used and consumed in the pressing of woollen cloths and stuffs in *G. B.*, 43 *G.3. c.*69. *Sched.* (C). Allowances to clothiers, and hot-pressers.

By stat. 42 *G.3. c.*94. § 6. Every person intending to claim any such drawback or allowance for glazed paper or press-paper shall, before he shall begin to make use thereof, produce the same to the officer of excise in the original cover or wrapper in which it was charged with the duty, and give to such officer a note in writing, specifying the day and hour on which he intends to produce such glazed or press-paper, and also the quantity thereof, and the name and residence of the maker or person from whom, and the time when it was received; and such person shall untie and open the same in the presence of such officer, who shall take account thereof, and destroy the duty stamp on the covers or wrappers; and as soon as such paper shall have been so long used as to be incapable of being again employed for any purpose, upon application to the proper collector (such application not to be oftener than twice in each year), stating in writing the actual quantity of such glazed paper and press-paper so used as aforesaid, and making oath before such collector (who is empowered to administer the same) of the real quantity thereof so used, that the same has been actually employed in the pressing of woollen cloths or stuffs by the party applying for such allowance, and for no other purpose whatsoever, and that all such paper, and every part thereof, is by such use become unfit for any other purpose, and that no drawback has been before received for such paper or any part thereof, then such collector shall allow a drawback of the duties charged or paid for such glazed paper or press-paper, without any fee or deduction. 42 G.3. c.94. On certain conditions.

§ 17. Any person convicted of wilfully taking a false oath, in order to obtain a drawback or allowance, shall be liable to the pains and penalties of perjury. False oath for drawback, perjury.

And by stat. 43 *G.3. c.*69. For every yard square of paper which shall be *printed*, *painted*, or *stained* in *G.B.* to serve for hangings or other uses (over and above the duties payable for such paper before the printing thereof,) shall be paid by the printer, painter, or stainer, 1¾*d.* 43 G.3. c.69. Duty on painted paper.

By stat. 10 *Ann. c.*19. § 43. All persons who shall make any paper, pasteboard, millboard, or scaleboard, or *print*, *paint*, or *stain any paper* for sale, or not for sale, shall leave notice in writing at the next excise office, of his name and place of abode, and of the places usually made use of in making, printing, &c. the same, on pain of forfeiting 30*l.* 10 Ann. c.19. Paper-stainer to enter his name and place of abode.

§ 44. No person shall use any drying place, or other place for

10 Ann. c.19. making the same fit for use, other than such of which he hath first given notice in writing to the officer, on the penalty of 20*l*.

42 G.3. c.94. By stat. 42 *G*.3. *c*.94. § 11 & 12. Certain regulations are enacted for regulating the making of pasteboard.

By § 13. No maker of pasteboard shall carry on the business of a maker of paper, nor carry on the business of making pasteboard, within one quarter of a mile of any mill or manufactory for making paper, on pain of forfeiting 100*l*.

§ 14. Pasteboard made in *G. B.* of paper that has been duly charged with the duties, shall not be charged with any farther duties.

56 G.3. c.103. By stat. 56 *G*.3. *c*.103. § 13. The provisions of 42 *G*.3. *c*.94. § 11, 12. respecting the materials from which pasteboard is to be made, shall apply only to such makers of pasteboard as are not makers, or concerned in the trade of a maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper; and it shall be lawful for every maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, to make at his entered paper-mill any pasteboard, subject to the duties herein mentioned, according to the quality thereof, from paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, made by him at such mill, before the same shall have been charged with the duty.

§ 15. There shall be allowed to every maker of pasteboard, not being a maker, or concerned in the trade of a maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, who shall make pasteboard, and be charged with the duties thereon, from paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, for which the duties shall have been paid, and which shall have been taken account of by the officer before the making thereof into pasteboard, so much of the duties paid for such paper, &c. as shall be equal to the duty paid by the maker of such pasteboard, upon oath being made by such maker, or his principal workman, to be administered by the collector or supervisor of excise, that such pasteboard has been wholly made from duty-paid paper, &c. so previously produced and taken account of.

1 G.4. c.58. Who shall be deemed pasteboard makers. By stat. 1 *G*.4. *c*.58. § 18. Every maker of pasteboard (not made at any mill) from paper of the first class only, for being cut into and sold by him as cards, not exceeding 64 square inches, or playing cards; and every maker of bottle-stands, spectacle-cases, tea-trays, or other articles of merchandise, made from or with paper, pasted together, and moulded into such articles, shall be deemed a pasteboard-maker, and shall take out a licence as a pasteboard-maker, and make entry of his premises at the proper office of excise: and every such maker shall give notice as a pasteboard-maker of opening reams for the sheets thereof being pasted as aforesaid, and shall, at the end of every quarter of a year, make to the proper officer of excise an entry in writing, signed by him or his foreman, of the weight of the paper and class thereof used by him in such quarter, and that he hath not in such quarter used any other than such paper as was opened in the presence of the proper officer, and is mentioned in such account: and if any such maker shall neglect to take out such licence, or to make such entry at the office of excise, or to render such

Pasteboard maker to take out a licence, and make entry of his premises.

Notice to be given of opening reams, and an account rendered of the quantity used quarterly.

quarterly account, or shall not make true entries and accounts, or any pasteboard-maker for cards shall use any other than first-class paper for that purpose, or shall make or sell pasteboard, except cut into cards not exceeding the size of 64 square inches, or playing cards, he shall forfeit 100*l.*; and no such maker who shall fulfil the conditions before mentioned, shall be liable to any other regulations relating to makers of pasteboard.

1 G.4. c.58.

Penalty on neglect, 100*l.* Not liable to any further regulations relating to pasteboard makers.

§ 14. Every maker shall daily enter, or cause to be entered, in a book to be provided by him for that purpose, a particular account of the quantity and weight of each class of paper, and of each denomination of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard, and of the progressive number of every ream and parcel thereof, which shall be sold or sent out from his mill, and the date of the impression of the departure stamp affixed thereon, and of the place to which, and the conveyance by which, the same shall be sent; and shall daily, or on every survey of any officer of excise of his mill or premises, deliver to him an account in writing, signed by such maker or his foreman, containing the progressive number of reams of paper, and parcels of millboard, &c. sent out on that day, or since the last survey of an officer of excise; and such book shall be at all times kept on the entered premises of such maker, open to the inspection of any officer of excise, of superior rank to a supervisor, and to any supervisor or officer of equal rank, when required by written order of a collector, or other officer of excise of superior rank to a supervisor, who shall survey the same: and if any maker shall neglect to keep such book, or make such entries therein, or shall make false entry therein, or alter, obliterate, or destroy any such entries, or tear thereout, or destroy any of the leaves or part of such book, or shall hinder or obstruct any such officer of excise from examining such book, or making extracts therefrom, or neglect to deliver to the officers of excise such paper, he shall forfeit 200*l.*

Maker to enter in a book an account of the quantity and weight of each class of paper, &c. sold or sent from his mill, with the date of the departure stamp; and deliver an account of the progressive numbers of reams, &c. sent out since last survey,

Book to be open to inspection.

Penalty for neglect or obstruction, 200*l.*

By stat. 56 *G.*3. *c.*103. § 19. For enabling the officers of excise to make an annual balance of the whole quantity of paper, &c. made by any maker of paper in the preceding year, and of the quantity thereof charged with duty, every maker, on the 5th of July in each year, or at such times as he shall leave off business, or transfer it to any other person not being a partner with him, on notice for that purpose given by the officer of excise, to such maker, seven days before such account shall be taken and balance made, shall lay, and place the whole of his uncharged stock and loose paper, reduced into reams and odd quires, and millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard, in dozens and odd sheets, in such order that the same may be conveniently numbered, weighed, or otherwise taken account of by the officers; and every maker shall, with his servants or workmen, give all needful assistance to the officers in taking account of such paper, &c. as by such officers may be found necessary; and if any such maker, or other person, shall obstruct or hinder any officer of excise in taking such account, or neglect to place and keep his uncharged or loose paper, &c. in the order aforesaid, or shall neglect, when required, to give the officers such assistance, or shall hide or conceal any such paper, &c. from

56 G.3. c.103. Makers to place their uncharged stock yearly in such manner as to enable the excise officers to make an annual balance of quantity of paper, &c. made and charged with duty.

Obstructing officers.

Penalty.

the inspection of the officers, or by any contrivance prevent them from taking a true account thereof, such maker shall forfeit, 200*l.*

1 G.4. c.58. Account of uncharged stock to be delivered to officer at his request.

By stat. 1 *G.*4. *c.*58. § 19. Every maker of paper, &c. shall, at the time of making the annual balance, deliver to the officer, at his request, a true account, signed by him or his foreman, of his uncharged stock of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard, distinguishing the class, and denomination, and quantity of each, and the place and condition in which the same are deposited; and if any maker shall deliver an untrue account, or shall not make out, and upon request deliver such account, he shall forfeit 200*l.*

Penalty 200*l.*

1 G.1. st.2. c.36. Officers shall mark every sheet.

By stat. 1 *G.*1. *st.*2. *c.*36. § 17. Before any paper shall be printed, painted, or stained, the officer shall be permitted to take an account of the quantities and dimensions of all paper in the possession of any such printer, &c.; and shall mark every sheet and piece with a stamp, to denote that such account has been taken.

26 G.3. c.78. And to make entry of paper.

By stat. 26 *G.*3. *c.*78. § 2. Every paper printer, painter, or stainer shall, once in every fortnight, make entry in writing upon oath, or on the oath of his chief workman, at the next office for the said duties, of all paper by him printed, painted, or stained within that time, and such entry shall contain the kinds and quantities thereof respectively, on pain of 50*l.*

Duties to be paid.

§ 3. And every stainer shall, within a fortnight after, pay the duties for all such paper, on pain of forfeiting double duty; and no person, after default in payment, shall sell or deliver out any paper until he hath paid the duty, on pain of forfeiting double the value thereof.

Mark on paper before painting.

§ 5. Before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that such account hath been taken; and where a single sheet shall be painted, the same shall be produced to the officer, who shall take an account thereof; and if he finds that every sheet is marked or stamped, he shall measure the same, and mark such piece or sheet at both ends with a frame mark, denoting the measure thereof, and with such other number or mark as the commissioners shall direct: And if any printer, &c. shall begin to print, paint, or stain any sheet of paper before it is so measured and marked, he shall forfeit 20*l.* and also such paper, which may be seized.

To be measured.

To be marked after painting.

§ 9. As soon as any paper shall have been printed, painted, or stained with any colour or figure, the officer shall take an account and charge the duties, and shall stamp every piece, where a single sheet, at both ends: And if any such stainer shall remove or send away, or suffer to be removed or sent away, any piece or sheet of such paper before the same has been taken account of and stamped as aforesaid, he shall forfeit 50*l.*; and also such paper may be seized if found in the possession of any dealer in printed, painted, or stained paper.

1 G.1. st.2. c.36. Officers to charge for paper missing.

By stats. 1 *G.*1. *st.*2. *c.*36. § 17. and 26 *G.*3. *c.*78. § 10. If any officer shall miss any quantity of paper, whereof he had so taken an account, and shall not, on reasonable demand, receive satisfaction what is become of it, he may charge the duties for it.

26 G.3. c.78. Pieces cut into samples.

By stat. 26 *G.*3. *c.*78. § 8. Pieces cut into samples or remnants shall be stamped by the officer, to whom six hours' notice shall be given by such stainer of the time he intends to cut the same.

By stat. 1 *G*.1. *st*.2. *c*.36. § 18. No person shall remove any such painted paper until the officer hath taken an account of the quantity thereof, and until every piece or parcel shall be marked or stamped, on pain of 20*l*. And the said paper being found in the possession of any stationer or other dealer, or other persons for his use, shall also be forfeited. 1 G.1. st.2. c.36. Not to be removed until an account is taken.

By stat. 26 *G*.3. *c*.78. § 11. Every stainer shall keep all paper by him printed, painted, or stained, and which hath not been stamped and charged with the duties, separate from the paper that hath been charged; on pain of 50*l*. 26 G.3. c.78. Paper unsurveyed to be kept separate.

§ 12. If any printer &c. shall fraudulently hide or conceal any printed, painted, or stained paper, with intent to defraud his majesty, he shall forfeit 100*l*. Concealing paper.

§ 16. No stainer, &c. shall keep any paper which hath been marked and stamped, in any unentered place: And if any paper which hath been printed, painted, or stained, whether marked or stamped or not, shall be found in the possession of any stainer in such unentered place, he shall forfeit 50*l*. and also the paper, which may be seized. Keeping paper in unentered places.

§ 17. Upon oath made before two commissioners within their limits, or one justice, by any person, that he hath reason to suspect or believe that any such paper is in the custody of any stainer, or other person trading therein, without having thereupon such stamp as by this act is directed, the said commissioners or justice may issue their warrant or order, authorizing any officer of the said duties, with the assistance of a constable or other peace officer, in the day time, to search for the same, and to open doors, chests, trunks, and packages, and to seize such paper, and to bring the same to the next excise office, which shall be forfeited; and if any person shall obstruct any officer from entering any such place, and in seizing or carrying away such paper, he shall forfeit 50*l*.: Provided, that no remnant, being of less length than shall be expressed by the frame mark thereon, so found having the stamp at one end thereof, shall be forfeited by reason of not having the stamp at both ends thereof. Suspected paper may be seized.

§ 18. To prevent fraud by adding to the length of any piece of stained paper, after the same hath been stamped at both ends, if any piece or remnant of stained paper, not having such stamp and frame mark thereon, or at one end thereof only, and being of as great or greater length than shall be expressed by such frame mark, or having such marks at both ends thereof, shall be of a greater length by half a yard or more than expressed by such frame mark, the same shall be forfeited, and may be seized, and the stainer, &c. or dealer in whose possession the same is found, shall forfeit 50*l*. Paper marked at one end only forfeited.

§ 13. The commissioners of the duties shall provide numbers or marks to denote the measure, and stamps or seals to denote the charging the duties, and if any person shall counterfeit or forge any frame, number, or mark, used by the officers, or the impression of the same upon any paper to be printed, painted, or stained, he shall forfeit 100*l*.; or if he shall counterfeit or forge any stamp or seal to resemble those provided in pursuance of this act, or the impression of the same upon any paper, in order to defraud H.M., he shall be guilty of felony without benefit of clergy: Counterfeiting or forging stamps, &c.

26 G.3. c.78. And if any person shall sell any paper with such counterfeit stamp, knowing the same, with like intent, he shall forfeit 100*l.* But see stat. 52 *G.*3. *c.*143. *ante*, p. 227.

Defacing marks. § 14. 15. If any stainer, &c. shall wilfully cut out, obliterate, or deface the frame mark, number, or mark, or willfully suffer the same to be done; or shall affix upon any piece or sheet of paper any frame mark, or stamp, or seal, which shall have been before affixed on any other piece or sheet of paper, with intent to defraud H. M., he shall forfeit 50*l.* and such piece or sheet.

Exportation. § 19. Printed, painted, or stained paper may be exported on certain conditions specified in the act; but the same shall not be permitted to be packed up in order to be exported, not having the stamps by this act directed, and also the frame marks plain at both ends of every piece, where a single sheet; and the officer who shall attend to see such paper packed up shall measure the same, and see that the said stamps and frame marks are cut off from both ends of every piece or single sheet.

Penalties how to be recovered. § 20. All penalties, fines, and forfeitures shall be sued for, recovered, levied, and mitigated as by the laws of excise (*a*), or in the courts at *Westminster*, half to the king and half to him who shall inform or sue. *See also* stats. 34 *G.*3. *c.*20. § 52. & 1 *G.*4. *c.*58. § 24.

10 Ann. c.19. 28 G.3. c.37. Utensils liable. And by stat. 10 *Ann.* *c.*19. § 55. and 28 *G.*3. *c.*37. § 21. all paper, materials, and utensils, in custody of the maker, or of any to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, in the same manner as if the offender or debtor were the lawful owner.

For the stamp duties on paper, see title Stamps, Vol. V.

Disputes between Paper makers and their workmen, see that head, title Servants, Vol. V.

IV. (13.) Plate.

[9 & 10 W. c.28. — 31 G.2. c.32. — 32 G.2. c.24. — 43 G.3. c.68. — c.69. — 52 G.3. c.59. — 53 G.3. c.103. — 55 G.3. c.30. — 59 G.3. c.32. c.52. — 1 G.4. c.14. c.32. — 3 G.4. c.27.]

59 G.3. c.52. By stat. 59 *G.*3. *c.*52. Certain duties of customs are imposed upon plate.

31 G.2. c.32. Licence. By stat. 31 *G.*2. *c.*32. § 2, 3. Each person trading in, selling, or vending gold or silver plate, is compellable to take out a licence.

	£	s.	d.
43 G.3. c.69. And by stat. 43 *G.*3. *c.*69. *Sch.* (A). Every person trading in, vending, or selling any gold or silver plate, or any goods in which any quantity of gold exceeding two pennyweights, and under two ounces in weight, or any quantity of silver exceeding five pennyweights and under thirty ounces weight, in one distinct ware, is manufactured, shall pay for every such licence -	2	6	0
55 G.3. c.30. And by stat. 55 *G.*3. *c.*30. the further sum of - -	2	6	0

59 G.3. c.32. But by stat. 59 *G.*3. *c.*32. § 2. No person trading in, vending, or selling silver or gold watches, and who shall not trade in, vend, or sell, or offer or expose to sale any other gold or silver plate, or any other goods or wares in which any quantity of gold exceeding two pennyweights and under two ounces in weight, or any quantity of

(*a*) For which see *ante*, § II.

silver exceeding five pennyweights and under thirty ounces in weight, in any one separate and distinct ware or piece of goods, is or are or shall be manufactured, shall be required or liable to pay for or upon any such licence as aforesaid, the sum of 2*l.* 6*s.* by the said act 55 *G.*3. *c.*30. 59 G.3. c.30.

§ 3. And for obviating all disputes touching the quantity or weight of gold or silver respectively manufactured or contained in any ware or piece of goods, it is enacted, that all goods, wares, and merchandize which shall be sold or offered for sale, or taken in pawn, or delivered out as and for gold or silver respectively, shall be deemed and taken to be gold or silver respectively, within the intent and meaning of the said recited act of the 55th year aforesaid, and of this act, and also of 43 *G.*3. *c.*69. and of all other acts now or which shall hereafter be in force relating to his majesty's revenue of excise.

And by stat. 43 *G.*3. *c.*69. *Sch.* (A) Every person trading in, vending, or selling any gold or silver plate, or any goods in which any quantity of gold of the weight of two ounces or upwards, or any quantity of silver of the weight of thirty ounces or upwards, in one distinct ware, is manufactured; and every pawnbroker trading in, vending, or selling gold or silver plate, or goods or wares in which any quantity of gold or silver is manufactured, or taking in or delivering out pawns of such plate, goods, or wares; and every refiner, for every such licence - - - - - - £ 5 15 0 *s.* *d.* 43 G.3. c.69.

And by stat. 55 *G.*3. *c.*30. the further sum of - - 5 15 0 55 G.3. c.30.

[N. B. The duties by stat. 43 *G.*3. *c.*69. are granted without limitation of time; those by stat. 55 *G.*3. *c.*30. were limited to 5th *April* 1819, but by stat. 3 *G.*4. *c.*27. they are continued until 5th *July* 1826.]

By stats. 31 *G.*2. *c.*32. § 4. and 32 *G.*2. *c.*24. § 3. The said licences shall be renewed annually ten days before the end of the year, on pain of forfeiting 20*l.* 31 G.2. c.32. 32 G.2. c.24.

But by stat. 31 *G.*2. *c.*32. § 7. Persons in partnership, carrying on their trade in one house or shop only, shall not be obliged to take out more than one licence for one year. 31 G.2. c.32. Persons in partnership.

By stat. 53 *G.*3. *c.*103. Upon the death of any person licenced, or upon the removal of any person from the house or premises in which his licence shall authorise him to make or manufacture, deal in, vend, or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorize the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted. 53 G.3. c.103. Transfer of licences on death or removal.

By stat. 32 *G.*2. *c.*24. § 1. No person shall be liable to take out any licence for trading in, vending, or selling any quantity of gold not exceeding two pennyweights, or of silver not exceeding five pennyweights, in any one separate and distinct ware or piece of goods. 32 G.2. c.24. Not to extend to small quantities.

By stat. 31 *G.*2. *c.*32. § 6. All persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or silver, or in which any gold or silver shall be manufactured; and also all persons employed to sell any gold or silver plate, or any 31 G.2. c.32. Auctioneer and other selling plate to be deemed traders.

31 G.2. c.32. such goods or wares aforesaid at any auction or public sale, shall respectively be deemed traders in, sellers, or venders of gold or silver plate, and shall take out a licence for the same.

32 G.2. c.24. Pawnbrokers and refiners. By stat. 32 *G*.2. *c*.24. § 4. No pawnbroker shall (either publicly or privately) trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured; nor shall any person use the trade of a refiner of gold or silver, without taking out and renewing yearly such a licence.

§ 4. And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate.

§ 4. If any pawnbroker shall trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or shall practise the business of a refiner, without such licence, or shall not have renewed the same yearly, and made such payment as aforesaid, he shall forfeit 20*l*.

31 G.2. c.32. Unto what places the licence shall extend. By stat. 31 *G*.2. *c*.32. § 7. No licence shall authorize any person to whom the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold or silver plate in any other shop or place, except in such houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such licence, or in booths or stalls at fairs or markets.

Prosecution for offences. § 11. Prosecutions for offences may be in the courts at *Westminster*, or otherwise, if within the limits of the chief office of excise in *London*, the same may be before three commissioners of excise, and in case of appeal before the commissioners of appeal; and elsewhere before two justices residing near to the place where the offence was committed; and if either informers or defendants shall think themselves aggrieved by the judgment of such justices, it shall be lawful for them to appeal to the next quarter sessions, who shall hear and determine the same, and whose judgment shall be final.

§ 11. The said commissioners of excise and commissioners for appeals (in case of appeal), and justices respectively, shall, upon complaint or information on oath, summon the party accused; and upon his appearance or contempt shall proceed to the examination of the fact; and on due proof made thereof by confession, or oath of one witness, shall give judgment, and issue warrants under their hands for levying the penalties by distress, and to cause sale of the goods levied upon (if not redeemed in 14 days), and for want of sufficient distress shall imprison the offender till satisfaction be made.

32 G.2. c.24. Mitigation. By stat. 32 *G*.2 *c*.24. § 8. They may mitigate the said penalty of 20*l*. as by the laws of excise.

Disposal of the forfeitures. § 12. All forfeitures (the necessary charges for the recovery thereof being first deducted) shall be distributed half to the king and half to him who shall inform or sue.

59 G.3. c.52. Importation. By stat. 59 *G*.3. *c*.52. Certain duties are imposed on plate imported, as particularly set forth in *Sched*. (A.) annexed to the act, to be under the management of the officer of customs.

9&10 W.3. c.28. Exportation. By stat. 9 & 10 *W*.3. *c*.28. § 1. So much wrought plate shall be exported yearly as shall be allowed by the commissioners of the customs, or three of them.

31 G.2. c.32. But by stat. 31 *G*.2. *c*.32. § 9. No drawback shall be allowed on the exportation of silver plate.

[For the duty on plate, and other particulars relating thereto, see Plate, Vol III.]

By stat. 44 *G.*3. *c.*98. Duties are imposed upon plate exported, and certain drawbacks allowed. 44 G.3. c.98.

By stat. 52 *G.*3. *c.*59. These drawbacks are also allowed upon all plate, provided it be proved before the commissioners of customs that it is new plate, and has never been used.

By stat. 1 *G.*4. *c.*14. § 1. No drawback or allowance shall be paid, nor any debenture given, on the exportation to foreign parts of any plate of gold, wrought or manufactured in *G. B.* into rings. 1 G.4. c.14. No drawback allowed on export of gold made in G. B. into rings; nor on gold manufactured in G. B., unless above 2 oz.

§ 2. No drawback or allowance shall be paid, or any debenture given, after the 1st day of *June* 1820, on the exportation to foreign parts of any articles of gold wrought or manufactured in *G. B.*, unless the same shall exceed the weight of two ounces.

§ IV. (14.) Salt.

[38 G.3. c.89. — 43 G.3. c.69. — 45 G.3. c.14. — 57 G.3. c.49. — 58 G.3. c.77. — 3 G.4. c.82. — 5 G.4. c.65.

By stat. 38 *G.*3. *c.*89. § 6. The management of the salt duties is transferred to the commissioners of excise (*a*); and by stats. 43 *G.*3. *c.*69., 45 *G.*3. *c.*14., 57 *G.*3. *c.*49. § 22., and 58 *G.*3. *c.*77. several duties are imposed thereon. 38 G.3. c.89. Duties.

By stat. 57 *G.*3. *c.*49. § 61. The several drawbacks payable on the exportation of duty-paid salt are repealed. 57 G.3. c.49. Drawbacks.

By stat. 3 *G.*4. *c.*82. intituled "*An act for reducing the duties of excise payable upon salt in* England, *and repealing the duties upon salt* (*not being foreign salt*), *and reducing the duties upon foreign salt payable in* Scotland." 3 G.4. c.82.

§ 1. It is enacted, that after the 5th day of *January* 1823, 13*s.* of the 15*s.* payable by law for every bushel of salt or rock salt, that shall be made at any salt work, or raised or taken out of any salt mine or salt pit in *England;* and the whole of the duties payable by law for and upon salt or rock salt, made at any salt work, or raised or taken out of any salt mine or salt pit in *Scotland;* and 7*s.* of the 9*s.* payable by law for every bushel of salt or rock salt brought from *Scotland* into *England;* and 1*s.* of the 1*s.* 6*d.* payable by law for every hundred weight of salted beef or pork, or bacon or other flesh, brought from *Scotland* into *England;* and 2*s.* of the 2*s.* 6*d.* payable by law for every bushel of coarse and impure rock salt, delivered from any rock salt pit or mine, or warehouse or storehouse, for the purpose of feeding or mixing with the food of sheep and cattle, or steeping seed, or preserving hay, or being employed as manure for land; and 13*s.* of the 15*s.* payable by law for every bushel of salt or rock salt imported from *Ireland* into *G. B.;* and 17*s.* 9*d.* of the 20*s.* payable by law for every bushel of salt, which shall be imported from beyond the seas into *G. B.*, and the several bounties payable by law on beef or pork salted in *G. B.* and exported to foreign parts: and the whole of the duty payable by law for and upon Certain duties on salt reduced, and other duties on salt repealed.

(*a*) See also stat. 57 *G.*3. *c.*49. § 30.

3 G.4. c.82.

muriate of potash, delivered by any maker or makers of glass, for the purpose of being used in the manufacture of alum, shall respectively cease and determine, except as to any arrear thereof, or any penalty or forfeiture incurred on or before the said 5th of *January* 1823.

Duties to be now payable.

§ 2. After the 5th of *January* 1823, and until the 5th of *January* 1825, there shall be paid in *England*, the several duties of excise hereinafter mentioned; (that is to say,)

For every bushel of salt or rock salt, that shall be made at any salt work, or raised or taken out of any salt mine, or salt pit in *England*, 2*s*., being the residue unrepealed of the aforesaid duty of 15*s*. payable on such salt and rock salt.

For every bushel of salt or rock salt, which shall be brought or imported at any time before the 5th day of *January* 1825, from *Ireland* into *G. B.*, or from *Scotland* into *England*, 2*s*., being the residue unrepealed of the aforesaid respective duties of 15*s*. and 9*s*., payable on salt and rock salt so brought or imported.

For every hundred weight of salted flesh, brought or imported at any time before the 5th day of *January* 1825, from *Scotland* into *England*, 6*d*., being the residue unrepealed of the aforesaid duty of 1*s*. 6*d*., payable on such salted flesh, to be paid when such salted flesh is brought by land into *England*, by the person bringing the same, upon entry thereof at the nearest office of excise in *England;* and if brought or imported by sea, to be paid by the importer before the landing thereof.

For every bushel of foreign salt, which shall be imported into *G.B.*, at any time before the 5th day of *January* 1825, 2*s*. 3*d*., to be paid by the importer before the landing thereof, being the residue unrepealed of the aforesaid duty of 20*s*., payable on such salt; and for every bushel of foreign salt which shall be imported into *G. B.* at any time after the 5th day of *January* 1825, 3*d*., to be paid by the importer before the landing thereof.

For every bushel of rock salt, delivered for any purpose of agriculture, 6*d*., being the residue unrepealed of the aforesaid duty of 2*s*. 6*d*. payable on such rock salt.

Excise duties on salt in Scotland repealed. Laws respecting foreign salt, and salt brought from Ireland into Scotland, and duty-free salt brought from England, into Scotland, &c. to remain in force.

§ 10. After the 5th of *January* 1823, all the laws of excise for levying the duties payable in *Scotland* on salt are repealed, and the laws of excise relating to foreign salt, and to salt imported from *Ireland* into *Scotland*, or salt brought from *England* into *Scotland* duty free, &c., shall continue in full force; provided, that nothing herein contained shall repeal or alter any laws relating to barilla imported into *G. B.*, or to mineral alkali called soda, &c.

Saving for laws relating to barilla, mineral alkali, &c.

§ 3. Until the 5th day of *January* 1825, in all cases where any duty is by this act required to be paid on any specific quantity of goods, wares, or merchandize, the same shall be deemed to apply in the same proportion, and after the same rate, to any quantity greater or less.

§ 8. Such of the duties as shall arise in *England*, shall be under the management of the commissioners of excise in *England;* and in *Scotland*, under the management of the commissioners of ex-

cise in *Scotland;* and by § 9. the several duties shall be paid, raised, levied, collected, recovered, and applied, in like manner, and by any of the general or special means or methods, as the former duties of excise hereby repealed. 3 G.4. c.82.

Duties, how levied.

§ 4. Every maker of salt in *Scotland,* shall, before he shall begin to make or refine salt in *Scotland,* take out an excise licence, and make entry at the nearest office of excise, of the premises used or intended to be used by him for making or refining salt in *Scotland,* first paying 20*s.* for every such licence which shall be granted previous to the 5th day of *January* 1823.

Salt-makers in Scotland to take out a licence, paying 20*s.*

§ 5. The money to be paid for such licence, which shall be taken out within the limits of the city of *Edinburgh,* shall be paid at the chief office of excise in *Edinburgh;* and in any part of *Scotland,* not within the said limits, shall be paid to the collector in whose collection such licence shall be granted.

Where the money for licences shall be paid.

§ 6. Until the 5th day of *January* 1825, no person shall begin to make or refine salt in *Scotland,* after the expiration of such licence, unless such person shall take out a fresh licence ten days before the expiration of such former licence, and renew every such licence from year to year; and if any person shall make or refine salt in *Scotland,* without taking out a licence, or renewing the same, or without making such entry, the person or persons so offending shall for every such offence forfeit the sum of 200*l.*

Licences to be renewed annually.

Penalty for making or refining salt without licence, 200*l.*

§ 7. Every licence shall continue in force for one year next ensuing the granting thereof: persons in partnership shall not be obliged to take out more than one licence in any one year; and no one licence shall empower any person to make or refine salt in *Scotland* in any work or place except the work and place whereof entry shall have been made at the office of excise.

Licence to be for one year.
Licence only to extend to one house or place.

By stat. 5 *G.*4. *c.*65. intituled "*An Act to repeal the Duties and Laws in respect of Salt and Rock Salt,*" dated 17th *June,* 1824. After reciting, that by stat. 3 *G.*4. *c.*82. certain duties of excise were imposed and made payable, till 5th *January* 1825, upon salt and rock salt in *England,* and upon salt imported from *Ireland* or *Scotland,* and upon salted flesh imported from *Scotland,* and upon foreign salt imported, and upon rock salt delivered for any purpose of agriculture: and that by stat. 3 *G.*4. *c.*99. certain duties on such salt were imposed and continued till the said 5th *January* 1825: "And whereas it is expedient that all duties, drawbacks, bounties, and allowances payable upon, or for or in respect of salt and rock salt, and salted flesh and fish, (except as hereinafter excepted and provided for,) and mineral alkali, in any part of the U. K., and upon licences for making oxymuriatic acid or oxymuriate of lime, and all laws, provisions, and regulations relating thereto, in and throughout the U. K. of *G. B.* and *Ireland,* should cease on the said 5th *January* 1825: it is enacted, that from and after the said 5th *January* 1825, the several duties of excise and customs payable by law for or upon salt made at any salt work, or rock salt raised or taken out of any salt mine or salt pit in *England;* and all duties of excise or customs on the importation or exportation of any salt or rock salt into or from any part of the U. K. of *G. B.* and *Ireland;* and all duties upon salted flesh brought from *Scotland* into *England;* and all duties upon mineral alkali, called

5 G.4. c.65.

From Jan. 5. 1825, Duties on salt or rock salt, &c. to cease.

5 G.4. c.65.

soda, made in *G. B.*; and all duties upon licences for making oxymuriatic acid or oxymuriate of lime; and all drawbacks, bounties, and allowances, for or in respect of any exportation, or use, or employment thereof, except as hereinafter excepted or provided for, shall be no longer paid or payable; except as to any arrear of any such duties or drawbacks which shall be unpaid on the said 5th *January* 1825: and all provisions, regulations, and restrictions in any act or acts in force immediately before the passing of this act, relating to any such duties, or such licences, or such drawbacks, bounties, or allowances respectively, or to any salt or rock salt, or such mineral alkali as aforesaid, or oxymuriatic acid or oxymuriate of lime; or to any person making, raising, importing, exporting, removing, receiving, selling, using, or applying any salt or rock salt, or with relation to any salted flesh or fish or other provisions, or to such mineral alkali or oxymuriatic acid or oxymuriate of lime respectively as aforesaid, or any residuum thereof, or to any of them, from and after the said 5th *January* 1825, shall be repealed, and shall then cease; except as to any bond relating thereto, or any account to be rendered, or any act to be done under the said acts or any of them, and according to the provisions thereof, or any of them; and except as to the recovery of any penalty or forfeiture in respect thereof, which shall have been incurred on or before the said 5th *January* 1825; and except as is hereinafter particularly excepted and provided for.

Not to affect any act for the encouragement of fisheries.

§ 2. Provided always, that nothing in this act contained shall repeal or alter any bounties or allowances granted or to be granted, allowed, and made payable under any act or acts for the encouragement and improvement of the *British* and *Irish* fisheries; any thing hereinbefore contained to the contrary in anywise notwithstanding.

Salt or rock salt warehoused, may be taken out, duty free, after Jan. 5. 1825.

§ 3. It shall be lawful for any person or persons, in any part of the U. K. of *G. B.* and *Ireland*, who, at any time before the said 5th *January* 1825, shall have warehoused any salt or rock salt without payment of duty, under any act or acts relating to the duties or any of them on salt or rock salt, to take such salt or rock salt out of warehouse, at any time after the said 5th *January* 1825, without payment of any duty, under such regulations as the commissioners of H. M.'s treasury, or any three of them, may from time to time direct, any thing in any act or acts to the contrary notwithstanding.

Drawback on salt exported from Ireland after Jan. 5. 1825, and before Oct. 10. 1825, allowed as under 3 G.4. c.99.

§ 4. Provided also, that at any time after the said 5th *January*, and before 10th *October* 1825, upon the exportation from *Ireland* to any place except *G. B.*, of any salt made and refined or manufactured in *Ireland* from *British* rock salt, on which the duties continued by stat. 3 *G.*4. *c.*99. for continuing and granting duties on salt in *Ireland*, shall have been paid, there shall be paid to the maker, manufacturer, or refiner, by whom or from whose manufactory such salt shall be exported, the several drawbacks allowed and made payable under the said recited act; and that upon the exportation from *Ireland* to any place, except to *G. B.*, of any foreign or bay salt, on which the duties payable on the importation thereof shall have been paid, and which shall not have been warehoused in *Ireland*, there shall be paid and allowed a

drawback of all the duties which shall have been paid upon the same, under such rules and regulations as are contained or referred to in the said recited act, and in like manner, to all intents and purposes, as if such salt had been exported at any time before 5th *January* 1825. 5 G.4. c.65.

§ 5. It shall be lawful for any proprietor or proprietors of, or any dealer or dealers in, salt in *England*, at any time after 10th *October* 1824, and before 5th *January* 1825, to provide at any town or in any place in *England* appointed or approved of by the commissioners of excise, such warehouse or warehouses as shall for that purpose be approved of by such commissioners, or by the person or persons appointed by them to examine or inspect the same, for the deposit and warehousing of salt or rock salt for home consumption; and it shall be lawful for such proprietor or proprietors of, and dealer or dealers respectively in, salt or rock salt, to deliver from the warehouse at his, her, or their salt works, salt mine, or salt pit, any such quantity of salt or rock salt as the commissioners of excise shall grant and allow for that purpose, to be removed to and lodged in such warehouse so to be provided as aforesaid, duty free, and on bond being given by the owner or proprietor of such salt or rock salt, or of such warehouse, with sufficient sureties, to be approved of by such commissioners, or the person appointed by them in that behalf, for the due removal of all such salt and rock salt, and for the delivery and deposit thereof in such warehouse as aforesaid, and payment of the duty as hereinafter mentioned; and every such warehouse, being for that purpose first duly entered by the proprietor thereof for such purpose as aforesaid, at the next office of excise, and the salt or rock salt being so therein afterwards lodged and deposited as aforesaid, shall be kept and secured under the lock or locks of the revenue of excise, to be provided with all other necessary fastenings by the respective supervisor of excise, at the expence of such proprietor, and also under the lock or locks of the proprietor of such warehouse; and every officer of excise having possession of the key or keys of the revenue lock or locks on any such warehouse, shall, on reasonable notice to him given for that purpose by the proprietor of such warehouse making entry thereof as aforesaid, attend and weigh into such warehouse all such salt and rock salt; and on notice in like manner shall, from time to time before the said 5th *January* 1825, weigh out and deliver from such warehouse all such salt and rock salt as shall be required and specified in any such notice for that purpose given by such proprietor to such officer as aforesaid, upon payment, or due security for payment, by such proprietor to the proper collector of excise, of the duty chargeable and payable by law for every bushel of salt or rock salt so delivered and weighed out of such warehouse, and shall grant a certificate for the removal thereof, as salt or rock salt duty paid; and on or as soon as may be after the said 5th *January* 1825, the proper supervisor, or officers of excise, shall weigh the salt and rock salt remaining in every such warehouse, and deliver the same to the proprietor thereof, together with the locks, keys, and other fastenings of such warehouse, upon such proprietor paying or giving due security for paying to the proper collector the full duties of excise

Warehouses may be provided, and salt and rock salt deposited therein duty free, at any time between Oct. 10. 1824, and Jan. 5. 1825.

Warehouses to be entered at the next excise office.

On notice salt may be taken out of warehouse before Jan. 5. 1825, on paying or giving security for the duty; after that day the salt remaining may be taken out duty free.

Duty to be paid for any deficiency.

chargeable and payable by law before 5th *January* 1825, for every bushel of salt or rock salt, and so in proportion for any less quantity than a bushel, which shall be deficient, after deducting from the quantity lodged and deposited in such warehouse, the quantity delivered out on payment of duty as aforesaid, and the quantity so then remaining in stock, and so weighed and taken account of as aforesaid.

Makers of Oxygenated Muriatic Acid and Oxymuriate of Lime.

For the regulations and enactments upon this subject, see stats. 55 *G.3. c.*66.—56 *G.3. c.*94.—57 *G.3. c.*49. § 58, 59.—59 *G.3. c.*57. § 28, 29, 30.—5 *G.4, c.*65.— *ante*, p.245.

§ IV. (15.) Soap.

[10 Ann. c.19.—12 Ann. st.2. c.9.—1 G.1. st.2. c.36.—11 G.1. c.30.—23 G.2. c.21.—c.32.—24 G.2. c.40.—5 G.3. c.43.—10 G.3. c.44.—12 G.3. c.46.—17 G.3. c.52.—23 G.3. c.77.—24 G.3. sess. 2. c.41.—c.48.—26 G.3. c.77.—27 G.3. c.31.—28 G.3. c.33.—c.37.—32 G.3. c.21.—43 G.3. c.69.—47 G.3. sess.2. c.30.—53 G.3. c.103.—55 G.3. c.30.—56 G.3. c.44.—59 G.3. c.52.—c.90—3 G.4. c.25.—c.27.]

10 Ann. c.19. Officers for the duties on soap.

By stat. 10 *Ann. c.*19. § 5. The commissioners of the treasury shall appoint commissioners for the duty on soap made in the kingdom; who shall substitute inferior officers.

17 G.3. c.52. Who only shall be permitted to make soap.

By stat. 17 *G.3. c.*52. § 1. No person, within the limits of the head office of excise in *London*, shall be permitted to make any soap, unless he occupy a tenement of 10*l.* a year, and be assessed to and pay the parish rates; and elsewhere, unless he be assessed to and pay to church and poor.

24 G.3. sess.2. c.41. Soap makers to be licenced.

By stat. 24 *G.3. sess.*2. *c.*41. § 7. Every maker of soap for sale shall take out a licence, for which, by stat. 43 *G.3. c.*69. *sched.* (A.), he shall pay 2*l.*, and by stat. 55 *G.*3. *c.*30. (continued until the 5th *July* 1826, by stat. 3 *G.*4. *c.*27., the further sum of 2*l.* Such licence to be renewed annually, ten days at least before the end of the year, under the penalty of 20*l.*

Persons in partnership.

By stat. 24 *G.*3. *sess.*2. *c.*41. § 8. Persons in partnership need only take out one licence for one house.

53 G.3. c.103. Transfer of licences.

By stat. 53 *G.*3. *c.*103. Upon the death of any person licenced, or upon the removal of any person from the house or premises in which his licence shall authorise him to make or manufacture, deal in, vend, or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorise the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted.

59 G.3. c.52. Importation.

By stat. 59 *G.*3. *c.*52. *table* (A.) Certain duties of customs are payable on hard and soft soap imported into *G. B.*

By stat. 43 *G.* 3. *c.* 69. *sched.* (C.) and stat. 56 *G.* 3. *c.* 44. A drawback of all the duties shall be paid for every pound weight avoirdupois of hard and soft soap made in *G. B.*, for which the duties imposed in respect thereof shall have been paid, and which shall be exported as merchandise to foreign parts.

43 G. 3. c. 69.
56 G. 3. c. 44.
Exportation. Drawbacks.

By stat. 43 *G.* 3. *c.* 69. *sched.* (C.) and 56 *G.* 3. *c.* 44. Certain duties are imposed upon soft soap and hard cake soap, or ball soap.

Home duty.

And certain allowances shall be made for soap used in the manufactures in *G. B.* viz. —

Allowance if used in manufactures.

	£	s.	d.
By stat. 56 *G.* 3. *c.* 44. For every pound weight of hard cake soap, or ball soap, made in *G. B.*, which shall be consumed in *G. B.* in the making any cloths, serges, kerseys, bays, stockings, or other manufactures of sheep or lamb's wool only, or manufactures whereof the greatest part of the value of the materials shall be wool, or in the finishing the said manufactures, or preparing the wool for the same	0	0	$2\frac{1}{4}$
By stat. 43 *G.* 3. *c.* 69. For every pound weight of soft soap made in *G. B.*, which shall be so consumed	0	0	1
By stat. 56 *G.* 3. *c.* 44. For every pound weight of hard cake soap, or ball soap, made in *G. B.*, which shall be consumed in *G. B.*, in the whitening of new linen in the piece for sale	0	0	2
By stat. 43 *G.* 3. *c.* 69. For every pound weight of soft soap, which shall be so consumed	0	0	$0\frac{3}{4}$
By stats. 23 *G.* 3. *c.* 77. — 56 *G.* 3. *c.* 44. — 3 *G.* 4. *c.* 25. For every pound weight of hard soap made in *G. B.*, which shall be consumed in *G. B.* on or before the 5th *July* 1826, in preparing and furnishing any manufactures from flax or cotton for sale, except such as shall be used in whitening new linen in the piece, in order to the sale thereof	0	0	$1\frac{1}{2}$
By stats. 23 *G.* 3. *c.* 77. — 43 *G.* 3. *c.* 69. — 3 *G.* 4. *c.* 25. For every pound weight of soft soap made in *G. B.*, which shall be so consumed.	0	0	$0\frac{3}{4}$

23 G. 3. c. 77.
56 G. 3. c. 44.
3 G. 4. c. 25.

23 G. 3. c. 77.
43 G. 3. c. 69.
3 G. 4. c. 25.

The allowances are paid to the manufacturers.

By stats. 10 *Ann.* *c.* 19. § 6. and 47 *G.* 3. *sess.* 2. *c.* 30. § 6. No maker of soap shall set up, alter, enlarge, or use any boiling-house, work-house, warehouse, storehouse, shop, room, or other place for the making or keeping of soap, or for the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or use any copper, kettle, furnace, fat, cistern, trough, or other vessel for the boiling or making of soap, without first giving notice thereof in writing, at the next office for the said duties, on pain of 200*l.* See also stat. 58 *G.* 3. *c.* 65. § 7.

10 Ann. c. 19.
47 G. 3. sess. 2. c. 30.
Place of making to be entered.

By stat. 10 *Ann.* *c.* 19. § 19. All soap, oil, tallow, and other materials for making soap which shall be found in any private boiling-house, workhouse, warehouse, or other place, and all private coppers, kettles, furnaces, troughs, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, and the value thereof, and shall be seized by the officers for the duties on soap.

10 Ann. c. 19.

And by stat. 5 *G.* 3. *c.* 43. § 19. Whereas offenders frequently withdraw themselves to avoid the aforesaid penalty of clandestine

5 G. 3. c. 43.
Summoning offenders.

making of soap, it is enacted, that a summons left at the place where discovery shall be made of such offence, directed to the person who shall be prosecuted for keeping or having made use of any place for the making or keeping of soap, or the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or for using or having used any copper or other vessel for the boiling or making of soap without notice given by his right or assumed name, shall be as effectual as if delivered personally, and directed to him by his proper name.

5 G.3. c.43. 12 G.3. c.46. Covers and locks to be provided.

By stats. 5 *G.3. c.*43. § 15. and 12 *G.3. c.*46. § 7. Every person who shall make any *hard* soap [and by stat. 32 *G.3. c.*21. the same is extended to *every* maker of soap] shall at his own expence provide sufficient wooden covers (to be approved of in writing by the surveyor or supervisor) to every copper, pan, or other utensil wherein he shall boil or make soap; which vessels, &c. with the pipes that convey the waste or salt lees therefrom, shall be locked and sealed down by the officer as soon as the fire is withdrawn, whenever any soap or any thing of a soapy quality shall be left therein; which said locks and keys, and all other necessary fastenings for securing the said vessels and pipes, shall be provided by the surveyor or supervisor at the expence of the maker. And if any person shall make any soap before he shall have affixed such covers, or shall refuse to pay for the locks and keys and other fastenings, or shall wilfuly break or damage any such lock or seal or other fastening, he shall forfeit 100*l.*

17 G.3. c.52. 24 G.3. sess.2. c.48. 32 G.3. c.21. Furnace doors, &c. to be locked.

By stats. 17 *G.3. c.*52. § 8. — 24 *G.3. sess.*2. *c.*48. § 9. — 32 *G.3. c.*21. The cover and furnace door and ash-hole door of every copper, pan, or other utensil used by any maker of soap, shall be securely locked and sealed down by the officer at all times except when the same shall be at work, or shall be opened for repairing the same, or for the inspection of an officer; and proper locks and keys and other necessary fastenings for securing the said covers and doors shall be provided by the surveyors and supervisors at the expence of such maker. And whenever such maker shall be desirous of opening such copper, pan, or other utensil, or the furnace or ash-hole door, he shall give, if in *London* 12 hours', elsewhere 24 hours' notice thereof to the officer, who shall attend to open such doors: and if by any device any person shall open such copper, pan, or other utensil, or the furnace or ash-hole door thereof, after the same shall have been so locked and secured, or shall wilfully damage or hurt any such lock or other fastening, he shall forfeit 100*l.*

24 G.3. sess.2. c.48. Officers to enter and survey.

By stat. 24 *G.3. sess.*2. *c.*48. § 7. 10. The officers shall at all times, by day or by night, and without waiting for a constable, be permitted, on request, to enter the house, boiling-house, warehouse, or other place used by any maker of soap, and by gauging, weighing, or otherwise take an account of the quantity of soap, and also of all materials for the making thereof, in the possession of such maker, and shall be permitted to stay in such house or other place so long as he shall think fit; and shall make a return thereof in writing to the commissioners, or whom they shall appoint, leaving a true copy, if demanded, with the maker; and if such officer shall refuse or neglect to leave such copy (after demand in

10 Ann. c.19.

writing), he shall forfeit 40*s.*: and if any maker shall obstruct such officer he shall forfeit 50*l.* 12 G. 1. c. 28.

By stat. 17 *G.*3. *c.*52. § 9. When any copper, pan, or other utensil used for the making of soap, or the furnace doors thereof, shall be secured as in this act and by stat. 5 *G.*3. *c.*43. is directed, the surveyor and supervisor or other superior officer shall, between the hours of five in the morning and eleven in the evening, be permitted on demand to enter every workhouse of such maker, and after entry to unlock and examine every such copper, pan, or utensil, and the doors thereof, and after such examination shall again lock and secure the same; and if any person shall obstruct the officer herein, he shall forfeit 100*l.*

17 G. 3. c. 52. Hours of entry by officer into soap-maker's workhouse to examine coppers, &c.

§ 10, 11, 12. No maker shall have any private pipe or conveyance, by which any soap or materials making into soap may be conveyed from his copper, &c. into any place whatever, on pain of 200*l.* for every pipe or conveyance: and the officer, in the daytime, and in presence of a constable, on request made and cause declared, may break up the ground in any soap-house, or the ground near adjoining, or any wall, partition, or other place, to search; and if he finds any such pipe or other conveyance, he may break up the house, wall, partition, or place through which the pipe shall lead, and break up or cut the same: and if any person shall obstruct the officer in such search, he shall forfeit 100*l.*

Private pipe or conveyance.

§ 12. Provided, that if upon search no such pipe shall be found, the officer shall make good the ground, wall, or other place, or make satisfaction to the owner, to be adjudged by two of the next justices; or such owner may bring his action for the damages.

§ 14. The maker shall once in every lunar month perfectly cleanse every copper, pan, or other utensil by him used in the boiling or making of soap, and shall give three days' notice thereof to the officer; and when cleansed, the officer shall make search, and if he find any hole not before known, such hole shall be deemed wilfully made for the purpose of conveying away soap from the sight of the officer before an account had been taken of the same; and the owner shall be liable to the penalties for concealing soap (that is, he shall forfeit 500*l.*, stat. 1 *G.*1. *st.*2. *c.*36. § 14, 15.) unless he shall prove that it was made by bursting or other accident since the last survey, and that he had given notice thereof to the officer who first came on survey after such accident happened. And if such maker shall neglect perfectly to cleanse his copper, pan, or other utensil so used, or to give such notice, or shall obstruct the officer in searching and examining, he shall forfeit 50*l.*

Coppers, &c. to be cleaned.

By stat. 59 *G.*3. *c.*90. § 1. Every maker of white, yellow, brown, or soft soap, shall, before he shall begin to cleanse or take any such soap out of any copper, pan, or vessel by him used for the boiling or making of such soap, give to the officer of the division or place where such soap is intended to be cleansed, notice in writing of the particular time and hour when he intends to cleanse or take such soap from or out of such copper, pan or vessel, as hereinafter mentioned; *viz.* if such soap is intended to be cleansed at any place within the limits of the chief office of excise in *London*, then such notice shall be so given six hours next before the time of beginning to cleanse or take such soap out of such copper, pan, or

59 G. 3. c. 90. Notice to be given to the officer of the time intended to cleanse or take soap out of the copper, &c.

59 G.3. c.90. vessel; and if such soap is intended to be cleansed at any place out of the limits aforesaid, then such notice shall be so given 12 hours next before the time of beginning to cleanse or take such soap out of such copper, pan, or vessel; and if any such maker of soap shall begin to cleanse any white, yellow, brown, or soft

Penalty 100*l.* soap, without giving such notice, he shall forfeit 100*l.*; and if any maker shall not begin to cleanse and take such soap out of the copper, pan, or vessel within the space of three hours after the particular hour mentioned in the notice, then such notice shall be void; and every maker of soap who, after the expiration of the said space of three hours, shall begin to cleanse or take any soap out of any copper, pan, or vessel, without having first given a new

Penalty 100*l.* notice, shall forfeit 100*l.*

24 G.3. sess.2. c.48. To have one moveable pump only.

By stat. 24 *G.*3. *sess.* 2. *c.*48. § 8. No maker shall have any pipe or other conveyance from or to any copper or pan made use of for the boiling of soap, except one moveable pump for taking out salt or spent lees, which pump shall be taken out of such copper or pan before locked down by the officer; and no maker shall have any cock or hole in the side, or curb, or bottom, or cover of such boiler or copper (except small holes not exceeding $\frac{1}{8}$ inch diameter on the cover to let steam through), nor shall have any part of the curb moveable, nor shall use any syphon, crane, or trinket, but shall take out all lees, soap, or other ingredients, by a pump or ladle, on pain of forfeiting 500*l.*

11 G.1. c.30. Soapmakers to give notice of making soap.

By stat. 11 *G.*1. *c.*30. § 33. 35. Every maker of soap shall give to the officer notice in writing of the time and hour each making of soap is intended to be begun, if within the limits of the bills of mortality, 12 hours, and if in any other place, 24 hours, before the beginning of such making, on pain of forfeiting 50*l.*; and if such making shall not be begun in six hours within the bills of mortality, and in 12 hours in any other place, after the time mentioned in the notice, it shall be void; and every maker who shall begin after the expiration of such times, without having given a new notice, shall incur the like penalty as if he had not given notice.

What deemed a beginning to work.

§ 34. The putting lees (*a*) or lye into the copper, or other utensil commonly used for making of soap, shall be deemed a beginning to work.

24 G.3. sess.2. c.48. Notice to officer before charging copper.

By stat. 24 *G.*3. *sess.* 2. *c.*48. § 12. Every maker of soap shall give to the officer notice in writing of the particular time and hour when he intends to charge his copper or boiler with any materials for making soap, if within the limits of the head office of excise in

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59 G.3. c.90. Lees shall not be manufactured, nor barilla, exceeding 28lbs. ground for sale. Penalty &c. Barilla not allowed unless in a soap maker's premises.

(*a*) By stat. 59 *G.*3. *c.*90. § 4. No person shall manufacture for sale, or sell any lees, ley, or lye, fit for the making of soap, or shall grind or pound for sale any barilla, or sell any ground or pounded barilla exceeding 28lbs. weight at any one time; and if any person shall manufacture for sale, or sell any lees, ley or lye, fit for the making of soap, or shall grind or pound for sale any barilla, or sell any ground or pounded barilla exceeding 28lbs. weight at any one time, he shall forfeit 100*l.*, and all such lees, ley and lye, and ground or pounded barilla, shall be forfeited, together with all vessels or packages containing the same, and may be seized by any officer of excise.

§ 7. All barilla, kelp, black ashes, lees, ley or lye, found in the possession of any person not being an entered soapmaker, shall be forfeited, and may be seized by any officer of excise.

London, 12 hours, and if at any other place, 24 hours, before the time of charging, on pain of forfeiting 100*l.*; and if he shall not begin to charge within three hours after the time mentioned in the notice, it shall be void; and every maker who, after the expiration of the said time, shall begin to charge without having given a new notice, shall forfeit 100*l.* 24 G.3. sess.2. c.48.

By stat. 5 *G*.3. *c*.43. § 15. If by any contrivance any maker of soap shall open any copper, pan, utensil, or pipe, before the same shall have been opened by the officer, he shall forfeit 20*l.* 5 G.3. c.43.

§ 16. No maker of *hard* soap shall light a fire under any copper, pan, or other utensil used in boiling of soap, or for cleansing his foul goods, or in preparing any materials for the making of soap, without first giving notice, if within the limits of the head office 12 hours, if elsewhere 24 hours, of his intention, on pain of 20*l.*

§ 17. Every maker of *hard* soap shall make use of regular square or oblong frames only, for the cleansing his soap (whether perfect or not) into, when taken out of the vessel where it was boiled; and the bottom, sides, and ends of every such frame shall be two inches thick at the least; and such frame shall not exceed 45 inches in length, nor 15 inches in breadth; and if any maker of hard soap shall make use of any other than such frames, he shall forfeit 20*l.* Frame to be made use of in working.

By stat. 47 *G*.3. *sess.* 2. *c*.30. § 9. No maker of hard soap shall, for cleansing his soap (whether perfect or not perfect) into, when taken out of the utensil where the same was boiled, make use of any frame, the sides and ends of each and every of the lifts whereof shall not be permanently mortised and nailed, or permanently dove-tailed and nailed together, nor make use of any frame of a less depth or height than that of 45 inches, nor shall cleanse or put his soap, when taken out of the utensil where the same shall have been boiled, into any frame in any less quantity than to the depth in such frame of 45 inches at the least; and if any maker shall, for the purpose aforesaid, make use of any other kind of frame, or shall cleanse otherwise than as above in this section mentioned, he shall for every such offence forfeit 50*l.*: Provided, that every such maker shall be at liberty to cleanse and put into one such soap frame as is hereinbefore directed to be used, the residue of any making of soap which shall remain after filling his other soap frame or frames to the depth of 45 inches at the least, though such residue of soap should be of any less quantity than sufficient to fill such one soap frame to the depth of 45 inches. 47 G.3. sess.2. c.30. Hard soap-makers not to use any soap frame whose sides and ends shall not be permanently fastened together, and which shall be less than 45 inches in depth, under the penalty of 50*l.*

And by § 10. No maker shall cleanse or take, or begin to cleanse or take, his soap from or out of any copper, &c. by him used for the boiling or making of soap, at any other time than between the hours of seven in the morning and six in the afternoon. Makers of soap cleansing any copper except between certain hours.
The remaining part of this section is repealed by stat. 59 *G*.3. *c*.90. § 2.; and it is thereby enacted, that every maker of soap, who shall begin to cleanse or take any soap out of any copper, boiler, or vessel by him used for the boiling or making of soap, shall cleanse and take the whole of the soap boiled or made in any such vessel, &c. out of the same within the times hereafter mentioned; (*viz.*) if any maker of hard soap shall begin to cleanse or take any hard soap out of any vessel, &c. and shall cleanse or put the same 59 G.3. c.90. Periods wherein the soap shall be cleansed and taken out of the boilers in manner herein mentioned.

59 G.3. c.90. into six frames, or more than six frames, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same within the space of three hours from the time of his having first begun to cleanse or take such soap out of such vessel, &c.; and if any maker of hard soap shall begin to cleanse or take any hard soap out of any vessel, &c. and shall cleanse or put the same into three frames, or less than six frames, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same, within the space of two hours from the time of his having first begun to cleanse or take such soap out of such vessel, &c.; and if any maker of hard soap shall begin to cleanse or take any hard soap from or out of any vessel, &c. and shall cleanse or put the same into two frames, or less than two frames, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same within the space of one hour from the time of his having first begun to cleanse or take such soap from or out of such vessel, &c.; and if any maker of soft soap shall begin to cleanse or take any soft soap out of any vessel &c. which shall contain 20 barrels or 5,120lbs. of soft soap, or more, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same within the space of three hours from the time of his having first begun to cleanse or take such soft soap out of such vessel, &c.; and that if any maker of soft soap shall begin to cleanse or take any soft soap out of any vessel, &c. which shall contain 10 barrels, or 2,560lbs., and less than 5,120lbs. of soft soap, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same within the space of two hours from the time of his having first begun to cleanse or take such soft soap out of such vessel, &c.; and that if any maker of soft soap shall begin to cleanse or take any soft soap out of any vessel, &c. which shall contain any such soft soap, and less than 10 barrels, or 2,560lbs. of soft soap, and shall not cleanse and take the whole of the soap boiled and made in such copper, pan, or vessel out of the same within one hour from the time of his having first begun to cleanse or take such soft soap out of such vessel, &c. every such maker of soap shall, in each and every such case, forfeit 50*l*.

Penalty 50*l*.

Regulations as to making of yellow or mottled soap.

§ 3. Every maker of hard soap, who shall make any yellow or mottled soap, shall, when and so soon as such yellow or mottled soap shall have been cleansed and taken out of the copper, pan, or vessel in which the same has been boiled and made, add and put into such vessel, &c. all the fob and skimmings which have been taken out of such vessel, &c. and also grease, in the proportion of at least one hundred weight of grease for every ton of yellow or mottled soap respectively, which such copper, pan, or vessel shall be computed by the officer to boil and make, and shall immediately re-melt such grease in such vessel, &c. in the presence of the proper officer of excise; and if any maker of soap shall make any yellow or mottled soap, and shall not, within the space of half an hour after such yellow or mottled soap shall have been cleansed and taken out of the vessel, &c. in which the same has been boiled or made, add and put into such vessel, &c. all the fob and skimmings which have been taken out of such copper, pan, or vessel, and also add fresh grease in the proportion aforesaid, or shall not imme-

diately melt such grease in such vessel, &c. in the presence of the proper officer of excise, every maker so offending shall forfeit 200*l*.

By stat. 24 *G.*3. *sess.*2. *c.*48. § 11. It shall be lawful for any officer of excise, as often as he shall think fit, by gauging, weighing, or otherwise, to take an account of all tallow, oil, rosin, and grease of every kind, and of all materials for making soap, which any maker shall have in his possession; and such maker shall provide proper scales and weights, and assist in weighing and taking such account, on pain of 20*l*. And in case the officer shall find any decrease in any materials for making soap, and shall not receive a satisfactory account thereof, he shall charge the maker with the duties of such decrease, according to the rates following; (that is to say) for every 14 cwt., or 210 gallons of oil missing, 20 cwt. of hard soap. 24 G.3. sess.2. c.48. Officer to charge for materials missing.

For every 13 cwt. of rendered tallow missing, 20 cwt. of hard soap.

For every 13½ cwt. of kitchen-stuff and tallow missing, 20 cwt. of hard soap.

For every 14 cwt. of tallow, rosin, and oil missing, 20 cwt. of yellow, brown, or rosin soap.

§ 13. Every soap-maker shall, before he begins to charge his boiler or copper, weigh in the presence of the officer all the materials with which he intends to charge the boiler or copper, and all such materials shall be put into the copper or boiler in the presence of the officer, and, in case the quantity of hard soap afterwards produced therefrom shall be found by the gauge in the frames to be less than ought to have been produced according to the rates aforesaid, such deficiency shall be charged with the duties thereupon, according to the rates before mentioned: provided, that if such boiler or copper shall have been charged with rough fat, or rough kitchen grease, then 8lb. of rough fat shall be deemed equal to 7l. of tallow, and 5lb. of rough kitchen grease to 4lb. of clean kitchen grease.

And by stat. 27 *G.*3. *c.*31. § 19. Every soap-maker shall, when required by any officer, before he charge his copper or boiler with any materials for making soap, weigh such materials (except lye) in the presence of the officer, and put the same into such copper or boiler, on pain of forfeiting 50*l*. 27 G.3. c.31. Materials to be weighed.

By stat. 10 *Ann.* *c.*19. § 16. No maker shall (on pain of 20*l*.) remove any soap of which no account hath been taken by the officer from where it was made, without giving the officer within the bills 24 hours' notice, and in other parts two days' notice, of his intention to remove the same. 10 Ann. c.19. Removing soap without notice.

§ 17. All makers shall keep the soap which shall not have been taken an account of by the officer, separate from that which hath been taken an account of, for 24 hours after making, within the bills, or two days in any other place; unless it shall have been sooner taken an account of, on pain of forfeiting 5*l*. Soap unsurveyed to be kept separate.

By stat. 1 *G.*1. *st.*2. *c.*36. § 14, 15. If any maker shall conceal any soap or materials, he shall forfeit the same, and also 500*l*. Concealing.

And by stat. 5 *G.*3. *c.*43. § 20. If the officer shall have cause to suspect that soap is privately making in any place, or that any soap is concealed with intent to avoid the duty; in such case, on oath 5 G.3. c.43. Privately making soap.

5 G.3. c.43.

made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer by day or night, (but if in the night, in the presence of a constable) to enter into every such place suspected, and to seize and carry away as forfeited all such soap as he shall there find so privately making, together with all materials then ready or preparing for making soap, and likewise all such soap as they shall find so concealed, together with the boxes or other package; and the person that shall be found privately making soap, or in whose possession such soap shall be found, shall forfeit 100*l.*

47 G.3. sess.2. c.30.
Penalty on persons assisting in making soap privately.

By stat. 47 *G.3. sess.2. c.30.* § 7. When any officer of excise shall discover that the making of soap is carried on in any boiling-house, workhouse, storehouse, warehouse, shop, room, or other place, whereof no notice in writing shall have been given at the office for the duties on soap next to the place where such soap shall be made, and shall at the same time discover in such boiling-house, &c. any person knowingly concerned in carrying on the making of such soap, the person so discovered shall forfeit 20*l.* over and above all penalties and forfeitures that the proprietor or maker of such soap, or the owner, renter, occupier, or possessor of such boiling-house, &c. shall be liable to; and the officer and all other persons acting in his aid, may stop and detain every person so discovered, and convey him before one justice of the peace for the county, &c. wherein so discovered; and such justice shall, on confession, or on proof by the oath of one witness, convict the person so discovered, and he shall immediately on such conviction pay the said sum of 20*l.* into the hands of the officer who shall have conveyed such offender before such justice, to be applied as hereinafter directed; and on such offender refusing to pay the same, the justice so convicting shall, by warrant, commit him to the house of correction for the said county, &c. there to be kept to hard labour for two months, to be reckoned from the day of such commitment, and not to be discharged until he shall have paid the said 20*l.*, or until the expiration of the said two months.

First offence 20*l.*

Officers may arrest them and carry them before a justice, who may convict and commit.

Second offence, 40*l.* or four months' imprisonment.

And in case the person so convicted shall be again discovered in any boiling-house, &c. whereof no such notice as aforesaid shall have been given, and where the making of soap shall be so carried on, in anywise concerned in carrying on such making of soap, he shall upon the like conviction forfeit for such second offence 40*l.*, and in default thereof shall be committed to the house of correction as aforesaid, there to remain during the term of four months, or until the said 40*l.* shall be paid.

Owners or renters of houses where soap shall be privately made to forfeit 200*l.*;

And by § 8. Every owner or renter of any house, outhouse, or other place in which any boiling-house, &c. for the making or keeping of soap, or for the boiling or keeping any oil, tallow, potash, lime, or other materials proper to be made into soap, or any copper, furnace, or other vessel for the boiling or making of soap, shall, with his permission or knowledge, be erected or used, without notice given thereof, shall forfeit 200*l.*; and every other person in whose occupation any house, &c. in which, &c. or any copper, &c. for the boiling, &c. shall be erected, &c. without such notice, shall be found, shall forfeit 200*l.*

and the occupiers of such houses shall forfeit 200*l.*

And by § 11. So often as any maker shall have cleansed his soap into any frame, wherein such soap shall be at the depth of fifty inches or under, every such maker shall, within 120 hours after such soap shall have been so cleansed into such frame, cut or divide such soap into cakes or bars, and remove every part thereof out of such frame; and when any maker of hard soap shall have cleansed his soap into any frame wherein such soap shall be of the depth of upwards of fifty inches, he shall, within 168 hours after such soap shall have been so cleansed into such frame, cut such soap into cakes or bars, and remove every part thereof out of such frame, on pain of forfeiting for every such offence respectively 50*l.*

47 G.3. sess.2. c.30.

Soap makers not cutting up their soap into cakes or bars within a certain time, to forfeit 50*l.*

By stat. 10 *Ann. c.* 19. § 8. Every barrel of soap shall contain 256lbs.; half barrel 128lbs.; firkin 64lbs.; half firkin 32lbs., avoirdupois; besides the weight or tare of the cask. And all soap, (except hard cake soap, and ball soap, 10 *Ann. c.* 26. § 111.) shall upon making thereof, be put by the maker into such cask, and none other.

10 Ann. c.19. Measure of soap.

And by stat. 12 *Ann. st.* 2. *c.*9. § 19. All soft soap that shall be filled in any other cask less than barrels, half barrels, firkins, and half firkins, shall be forfeited, and also 5*l.*

12 Ann. st.2. c.9.

By stat. 24 *G.*3. *sess.*2. *c.*48. § 14. No maker shall sell any hard soap but in the form of cakes or bars, or what is called *ball soap;* and shall return all scraps and parings into the boiler in the presence of the officer immediately after the soap that has been put into the frames shall have been cut up for sale, on the penalty of 100*l.*

24 G.3. sess.2. c.48. Hard soap to be sold in cakes, and the scraps returned.

By stat. 28 *G.*3. *c.*37. § 14. If any scraps or parings of hard soap shall be sold or sent out by any maker, or shall be found removing or removed by land or water, the same shall be forfeited, together with the casks and packages, and shall be seized by any officer of excise; and the maker who shall send out or sell the same shall for every such offence forfeit 100*l.*

28 G.3. c.37.

By stat. 17 *G.*3. *c.* 52. § 3. The maker shall weekly make entry in writing at the next office of all the soap by him made within each week, setting forth the weight, and what quantity was made at each boiling in that week, on pain of 50*l.* for every neglect; which entries shall be on oath (or if a quaker, affirmation) of the maker, or chief workman, according to the best of his knowledge and belief. The said entry and oath, within the bills, to be at the chief office of excise; and elsewhere, with the collector and supervisor.

17 G.3. c.52. Entry and payment of the duties.

§ 4. And within one week after entry, the maker shall pay and clear off the duties, on pain of double duty; and after such default in payment, he shall not sell or deliver out any soap, until he hath paid off his duty, on pain of double value.

§ 5. No maker shall be obliged to go or send further than the market town where the soap is made, or the next market town, to make such entry or payment.

By stat. 26 *G.*3. *c.*77. § 10, 11. Any person who shall knowingly receive, buy, or have in his possession any soap after the same shall have been removed from the place where it was made, and ought to have been charged with the duty, before the said duty hath been charged, (except such as hath been condemned as forfeited), whether he claim any property or interest therein or not, shall forfeit the same, and treble the value thereof, to be estimated at the highest *London* price.

Persons having soap in their possession which hath not been charged with the duty.

23 G.2. c.21. Soap carried coastwise. By stat. 23 *G.2. c.*21. § 29. cocquets granted for shipping soap, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, the same shall be forfeited and seized, together with the package.

Importation and exportation. § 27. No soap shall be imported otherwise than in some package, containing at least 224 pounds of neat soap, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master or person taking charge of the vessel to forfeit *50l.*

26 G.2. c.32. But by stat. 26 *G.2. c.*32. § 8. On information brought against any such master, he may detain the wages of the mariners till it be determined; and if it shall appear that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture.

23 G.2. c.21. By stat. 23 *G.*2. *c.*21. § 28. The officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped.

§ 30, 31. The officers of excise or customs may seize any soap with the package that shall be found in any vessel, or shall be carrying in any cart or other carriage, where they shall have good reason to believe that the same was made in some private workhouse or other place, or clandestinely imported without payment of duty, or that the same has been exported and re-landed after repayment of the duty; and if the party in whose possession the same shall be found shall not at the hearing of the information make it appear that the duty hath been paid or secured, he shall forfeit *5l.* for every 100 pounds weight, and so in proportion for any greater or lesser weight; and also the goods and package shall be forfeited.

§ 32. If any person shall knowingly harbour or conceal any soap unlawfully imported, or re-landed after shipping for exportation upon debenture, he shall, whether he claim any property therein or not, forfeit *50l.* for every hundred pounds weight, together with the goods and package.

§ 33. Where any such soap shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made seizure may cause notice, signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then public notice shall be given by proclamation at the next market town on the next market day after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon shall not be liable to any appeal, or be removed by *certiorari*.

10 Ann. c.19. Scales and weights. By stat. 10 *Ann. c.*19. § 13. The maker shall keep just scales and weights where he makes his soap, and permit and assist the officer to use them; on pain of *10l.*

10 G.3. c.44. And by stat. 10 *G.*3. *c.*44. If he shall use insufficient scales or weights, he shall forfeit *100l.*; but not to be prosecuted both on this and the former act. And by stat. 28 *G.*3. *c.*33. § 15. the same shall be forfeited, and may be seized by any officer.

By stats. 10 *Ann.* *c.*19. § 26.—11 *G.* 1. *c.* 30. § 39.—24 *G.*2. *c.*40. § 29.—43 *G.*3. *c.*69. § 4.—59 *G.*3. *c.*90. § 12, 13. The excise laws shall be in force for managing these duties; and the penalties, except where it is otherwise herein directed (*a*), shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster;* and distributed half to the king, and half to him that shall sue. Power of the justices.

By stat. 23 *G.*2. *c.*21. § 35. Where any soap shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on claimer, and not on the officer. Proof to lie on the claimer.

§ 37. If the party is not satisfied with any judgment of the justices on the act of 23 G.2. c.21. above mentioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized). Appeal.

§ 38. On information on stat. 23 *G.* 2. *c.* 21. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. Mitigation.

And by stats. 10 *Ann.* *c.*19. § 20.—28 *G.*3. *c.*37. § 21. All soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. Utensils liable.

And whereas doubts have arisen whether the provisions of the aforesaid act 5 *G.*3. *c.*43. extend to the makers of *ball soap*, it is declared by stat. 28 *G.*3. *c.*37. § 13. that the provisions of the said act do extend to the makers of ball soap. 5 G.3. c.43. extended to makers of ball soap.

By stat. 59 *G.*3. *c.*90. § 6. When any soap exceeding the quantity of 28lbs. shall be removed or carried by land or by water, the word "soap" shall be painted or marked in large and legible letters, of at least two inches in length, on every chest, basket, box, cask, and package wherein such soap shall be contained; and further, when any soap exceeding the quantity of 28lbs. shall be removed or carried in any cart, waggon, or other carriage, by any person not being a known and public or common carrier of goods and merchandize from one part of *G.B.* to another, the word "soap" shall be painted or marked in large and legible letters of at least three inches in length, on some conspicuous and uncovered part of every such cart, waggon, or other carriage; and all soap exceeding the quantity of 28lbs. which shall be removed or carried, or removing or carrying, in any chest, basket, box, cask, or package, not having the word "soap" painted or marked thereon in large and legible letters of at least two inches in length, or which shall be removed or carried, or removing or carrying by any person not being a known and public or common carrier of goods and merchandize from one part of *G. B.* to another, in any cart, waggon, or other carriage, not having the word "soap" painted or marked in large and legible letters of at least three inches in length, on some conspicuous and uncovered part of such cart, waggon, or other carriage, shall be forfeited, together with the chest, basket, box, cask, or other package containing the same, and the boat or vessel, horse or horses, or other 59 G.3. c.90. In the removal of soap, exceeding 28lbs. the word "*soap*" shall be put on the package, on penalty of 100*l.* and forfeiture of vessel, carriage, &c.

(*a*) A particular method is directed for levying the penalties imposed by stat. 23 *G.*2. *c.*21.; but being the same as for *Candles* and *Starch*, it is unnecessary to repeat it here, being set forth at large, *ante*, this title, Sect. IV. (4.)

59 G. 3. c. 90. cattle, waggon, cart or other carriage made use of in the removal or carriage of the same, and shall and may be seized by any officer or officers of excise; and the person or persons in whose custody or possession such soap shall be found, or who shall be or shall have been employed or concerned in the removal or carriage thereof, shall forfeit 100*l.*

Soap makers to receive books containing certificates to be filled up and sent out with every quantity of soap sold exceeding 28lbs.

§ 8. Every maker of soap shall, upon demand, receive from the proper officer of excise a book prepared with printed forms and titles for the purposes hereafter mentioned, to be kept by every such maker of soap in some public and open part of his entered premises; and no soap exceeding 28lbs. shall be sold or delivered by any such maker of soap to any person without being accompanied by a certificate filled up and cut out progressively from the printed forms contained in such book signed by the maker of soap selling or delivering the same, or some person on his behalf, certifying the date, the quantity, quality, sort, or kind of such soap, to whom sold, from whose stock delivered, and that the duty has been paid or secured to be paid; and the maker selling or delivering any soap exceeding 28lbs, shall at the same time make a correspondent entry thereof, containing the same particulars, in such book; and such book, with such entries, shall at all times, from six o'clock in the morning until seven o'clock in the evening, lie open in the entered premises of such maker of soap, to the perusal of any officer of excise, and shall be delivered by such maker of soap to any officer of excise, upon demand; and if any maker of soap shall sell or deliver any quantity of soap exceeding 28lbs. at any one time, unaccompanied by such certificate, or without making such entry, or shall convey away or conceal any such book, or cancel, obliterate, destroy, or tear out any leaf therefrom, or entry therein, or shall make any false entry therein, or shall oppose or obstruct any officer of excise in inspecting any such book or entry therein, or shall at any time neglect, when required, to deliver up to any officer such book, he shall forfeit 200*l.*; and all soap exceeding 28lbs. removing or removed without being accompanied by a certificate, shall be forfeited, and may be seized by any officer of excise and the person removing, or conveying the same, or who shall be or shall have been employed or concerned, or assisting therein, or in whose custody the same shall be found, shall forfeit 200*l.*

Penalty 200*l.* and forfeiture of soap.

Officers may demand the inspection of soap on its removal, with the certificate accompanying it.

§ 9. Every person who shall be found removing or directing the removal of any soap from one part of *G. B.* to another, or shall have received any soap so removed for sale, shall upon demand of any officer of excise, produce the same and such certificate to such officer, to be by him examined, and to compare such quantity and quality of soap with such certificate accompanying the same; and if any such person neglect to produce any such soap or certificate, or permit such examination, &c., or shall obstruct any officer of excise therein, or in executing any of the powers of this act, every such person shall forfeit 200*l.*: and in every such case all such soap shall be forfeited, together with the boat, vessel, cart, waggon, and other carriage, horses, and cattle removing the same, shall be forfeited, and may be seized by any officer of excise.

Penalty on obstruction 200*l.* and forfeiture of soap, &c.

Books of specimens for recording entries

§ 10. And whereas it is usual for the officers of excise to leave on the premises of the traders and manufacturers under their survey, certain books or papers commonly called *specimens,* for recording

therein the entries in the books of such officers of the state of the manufactory, and the accounts and particulars of survey taken by them from time to time at such traders or manufacturers: And whereas such practice has been found beneficial to the revenue, and it is expedient to prevent the removal, obliteration, or destruction of such excise specimens; it is therefore enacted, that it shall be lawful for any officer of excise to leave and deposit in any house, workhouse, room, or place, entered or made use of by any trader or manufacturer, subject to the survey of any officer of excise, a certain book or paper commonly called *a specimen*, and at all times to have free access to such book or paper; and if any person, not being an excise officer, shall remove, convey away, or conceal any book or paper, commonly called *a specimen*, or shall injure, damage, or destroy the same, or deface or obliterate any entry or entries therein, or shall obstruct, or hinder any officer of excise from having free access to, or from inspecting any such book or paper, or in making any entry therein, or in taking away any such book or paper, as to such officer shall seem meet, the person so offending shall forfeit 200*l.*

59 G.3. c.90.

to be left on the premises of traders or manufacturers.

Penalty on removing them; or defacing entries, 200*l.*

§ IV. (16.) Spirituous Liquors.

So far as running of brandy and other spirituous liquors falleth in with the running of other uncustomed goods; see the first part of this title concerning the Customs in general.

Liquors derelict are by stat. 52 G.3. *c.*159. § 1. subjected to excise duties, and see this sect. tit. *Tobacco.*

In order more clearly to explain the matters under this head, it is proposed to arrange the same in the following manner:

(*a*) Matters relating to Foreign Spirits imported.

[4 W. c.5.—1 An. st.2. c.14.—6 G.1. c.21.—8 G.1. c.18.—11 G.1. c.36. — 9 G.2. c.35. — 31 G.2. c.36. — 32 G.2. c.29. — 3 G.3. c.22. — 5 G.3. c.43. — 6 G.3. c.46. — 17 G.3. c.52. — 19 G.3. c.69. — 23 G.3. c.70. — 26 G.3. c.70. — c.73. — c.77. — 43 G.3. c.69. — c.81. — 57 G.3. c.123. — 59 G.3. c.52. — c.53. — c.105. — 1 & 2 G.4. c.94. — 5 G.4. c.34.]

(*b*) Concerning Spirits made in England, and therein of Distillers, Compounders, and Rectifiers.

[7 & 8 W.3 c.30.—8 & 9 W.3. c.19.—10 & 11 W.3. c.4.—c.21.—4 An. c.12. — 24 G.2. c.40. — c.73. — 33 G.2. c.9. — 2 G.3. c.5. — 12 G.3. c.46. — 14 G.3. c.23. — c.73. — 19 G.3. c.50. — 21 G.3. c.55.—23 G.3. c.70. — 24 G.3. c.40. — sess.2. c.41. — 26 G.3. c.73. — c.77. — 30 G.3. c.37. — 41 G.3. (*U.K.*) c.97. — 42 G.3. c.93. — 43 G.3. c.97. — 53 G.3. c.103. — c.147. — 55 G.3. c.30.— 57 G.3. c.123. — 58 G.3. c.28. — 59 G.3. c.32. — c.53.]

(*c*) Spirits made in England for Exportation, or shipped, as Stores, or carried Coastwise.

[3 G.1. c.4. — 6 G.2. c.17. — 33 G.2. c.9. — c.28. — 2 G.3. c.5. — 5 G.3. c.5. — 6 G.3. c.46. — 27 G.3. c.13. — 28 G.3. c.37. — c.46.—42 G.3. c.93. — 43 G.3. c.69. — 57 G.3. c.123. — 1 & 2 G.4. c.94.]

(d) Spirits made in England to be exported to Scotland, and in Scotland to be brought into England.

[28 G.3. c.46. — 33 G.3. c.61. — 39&40 G.3. c.73. — 43 G.3. c.69. — 45 G.3. c.100. — 1&2 G.4 c.82. — See also stats. 1 G.4. c.74. — 3 G.4. c.52. — c.111. — 3 G.4. c.76.]

(e) Matters relating to Importers and Dealers in Spirits by Wholesale and Retail; and the recovering and Application of Penalties.

[7&8 W.3. c.30. — 12&13 W.3. c.11. — 6 G.1. c.21. — 8 G.1. c.18. — 11 G.1. c.30. — 12 G.1. c.28. — 2 G.2. c.28. — 6 G.2. c.17. — 9 G.2. c.23. — 11 G.2. c.26. — 16 G.2. c.8. — 17 G.2. c.17. — 24 G.2. c.40. — 26 G.2. c.13. — 32 G.2. c.29. — 5 G.3. c.46. — 13 G.3. c.56. — 19 G.3. c.69. — 21 G.3. c.55. — 24 G.3. sess.2. c.41. — 26 G.3. c.73. — 27 G.3. c.30. — 28 G.3. c.37. — 29 G.3. c.63. — 30 G.3. c.13. — c.37. — c.38. — 43 G.3. c.69. — c.81. — 48 G.3. c.84. — 53 G.3. c.103. — c.147. — 55 G.3. c.30. — 56 G.3. c.113. — 59 G.3. c.32.]

(a) Matters relating to Foreign Spirits imported.

43 G.3. c.69. Duty on importation.

By stats. 43 *G.*3. *c.*69. *Sched.* (A). — 43 *G.*3. *c.*81. Several duties are imposed upon spirits imported.

The excise duties granted by 43 G.3. c. 69. on the importation of rum the produce of the *British* colonies in America, were reduced by stat. 5 *G.*4. *c.*34. § 1.

5 G.4. c.34.

59 G.3. c.52.

And by stat. 59 *G.*3. *c.*52. several duties of customs are imposed. The said duties payable by the importers before landing.

32 G.2. c.29. Officers may take samples.

By stat. 32 *G.*2. *c.*29. § 1. It shall be lawful for the gaugers or other officers of excise, at any time before the gauging, to take a sample, not exceeding half a pint in the whole, out of each cask or other package containing foreign spirituous liquors imported, without paying any thing for the same; and it shall be lawful for the importer or proprietor, in the presence of the officers of excise, and whilst the spirits are on shipboard, to take the like samples without paying any duty for the same.

26 G.3. c.73.

And by stat. 26 *G.*3. *c.*73. § 36. Any officer may take samples of foreign spirits, in the custody of any distiller, rectifier, compounder, or dealer, not exceeding four gallons, paying for the same at the rate of 13*s.* *per* gallon; and if any person shall obstruct such officer, he shall forfeit 100*l.*

1 Ann. sess.2. c.14. Landing French brandy without paying the duty.

By stat. 1 *Ann. sess.*2. *c.*14. § 2. If any person shall land or deliver out of any vessel or boat any *French* brandy before the duty be paid or secured, or without licence from the proper officer so to do, he and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value; and if any officer of the customs or excise shall connive thereat, or shall be concerned therein, or conceal the same, or not give notice thereof, he shall be incapable to hold any office in the revenue, and forfeit 500*l.*

By stat. 11 *G.*1. *c.*30. § 1. The officers of excise may go on board and enter any ship or vessel, and search in like manner as the officers of the customs now do, for any exciseable liquors, and seize all such as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the casks and other package. 11 G.1. c.30. Excise officers may go on board.

§ 2. If any officer of the excise have cause to suspect that any foreign brandy, rum, arrack, spirits, or strong water shall be fraudulently concealed in any place, entered or not entered, if within the bills of mortality, on oath made before two commissioners, if elsewhere before one justice, where he suspects them to be concealed, setting forth the ground of his suspicion, he or they may by special warrant authorise such officer by day or night, but if in the night in presence of a constable, to enter, seize, and carry away the same as forfeited, together with the casks or vessels; and if any person shall obstruct such officer, he shall forfeit 100*l.* Warrant to search for brandy, &c. fraudulently concealed.

By stat. 8 *G.*1. *c.*18. § 24. All brandy, arrack, rum, spirits, and strong waters, *British* or foreign, and all foreign exciseable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or persons deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, and no other person. 8 G.1. c.18. Who only may seize.

§ 25. And if any person shall obstruct any officer of customs or excise in seizing any of the said liquors, or endeavour to rescue them after seizure, or shall after seizure stave or otherwise damage any cask or vessel; he shall forfeit 40*l.* Obstructing the officer.

By stat. 5 *G.*3. *c.*43. § 27. If any foreign brandy, arrack, rum, strong waters, or spirits of any kind shall be imported in any ship, vessel, or boat of 100 tons burden, or under, (except only for the use of the seamen, not exceeding two gallons each), such vessel, with her tackle, &c., and also the brandy, &c., shall be forfeited. Except rum or other spirits of the growth and manufacture of the *British* sugar plantations, which may be imported in vessels not being less burden than 70 tons. 5 G.3. c.43. In what ships to be imported. 6 G.3. c.46.

By stat. 59 *G.*3. *c.*53. *Sch.* (B). and *c.*105. Countervailing duties are granted on spirits extracted in *Ireland*, and imported into *England*, or extracted in *England* or *Ireland* and imported into *Scotland*. 59 G.3. c.53. & c.105. Importation from Ireland.

But by stat. 5 *G.*3. *c.*43. § 30. To prevent clandestine landing of spirits from *Ireland*, if any brandy, rum, strong waters, or other spirits shall be entered or shipped for exportation from *Ireland* to any place not within the same kingdom, in any vessel under the burden of 100 tons (except only for the use of the seamen, not exceeding two gallons each), the said vessel with the tackle and furniture, and also all such spirits, shall be forfeited. 5 G.3. c.43.

By stat. 9 *G.*2. *c.*35. § 22. Where *any* vessel coming from foreign parts, and having on board any foreign brandy or other spirits, in casks under 60 gallons (except only for the use of the seamen, not exceeding two gallons each (*a*)) shall be found at anchor hovering within the limits of any port, or within two leagues of the shore, or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting (unless in case of unavoidable necessity and distress of weather, of 9 G.2. c.35. Vessels with brandy hovering within two leagues of the shore.

(*a*) See stat. 57 *G.*3. c.33. *ante*, p. 24.

which the person in charge or command shall give notice to and make proof of before the chief officer of the customs at the port, immediately upon arrival in such port), all such spirits, with the casks and other packages, or the value thereof, shall be forfeited (whether bulk shall have been broken or not); and the same may be seized, or the value thereof sued for, by any officer of the customs or excise. And by stat. 3 *G*.3. *c*.22. § 5. If such vessel do not exceed the burden of 50 tons, the said vessel also, together with her tackle and furniture, shall be forfeited. See stat. 48 *G*.3. *c*.84. § 7. *post*, p. 268.

3 G.3. c.22.

6 G.1. c.21. Unshipping into boats in order to be landed.

By stat. 6 *G*.1. *c*.21. § 32. If the master, purser, or other person having charge of the vessel, shall suffer any brandy (or other uncustomed goods) to be put out of the ship into any hoy, lighter, boat, or bottom, to be laid on land, he shall, besides the other penalties, suffer six months' imprisonment.

4 W.3. c.5. In what casks to be imported.

By stat. 4 *W*.3. *c*.5. § 8. No brandy shall be imported in any vessel not containing 60 gallons at the least, on pain of forfeiting the same or the value.

5 G.3. c.43.

And by stat. 5 *G*.3. *c*.43. § 28. No *geneva* or *rum* shall be imported in any vessel or cask not containing 60 gallons at least (except only for the use of the seamen, not exceeding two gallons each), on pain of forfeiture.

§ 29. In case it shall be made appear to the satisfaction of the commissioners of the customs that any rum, being the produce of any of H. M.'s dominions in *America*, shall be imported from thence in small casks, without fraud or concealment, either for the use of the master in the voyage, or for the private use of merchants importing the same, or designed as presents, and not by way of merchandize, such commissioners may, if they think proper, admit such rum to an entry, and cause the duties to be accepted instead of the forfeiture.

1 & 2 G.4. c.94. No rum of the British colonies shall be imported from Great Britain to Jersey, &c. on pain of forfeiture, unless permission be given by the commissioners of customs, who may grant licence to export rum under the conditions herein mentioned.

By stat. 1 & 2 *G*.4. *c*.94. It is enacted, that it shall not be lawful to export or to enter for exportation from any part of *G. B.* to the islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, or to any or either of them, under the penalty of the forfeiture thereof, to be seized by any officer of the customs or excise, any rum of the production and manufacture of the *British* colonies or plantations, unless permission be first given for that purpose by the commissioners of H. M.'s customs in *England*, or any four or more of them, by licence under their hands; and the said commissioners, or any four or more of them, are hereby authorised and required, on application to them in writing for that purpose, to grant their licence from time to time under their hands (such licence to continue in force 30 days from the date thereof and no longer,) to any of H. M.'s subjects, to export from any port in *England*, in *British*-built ships, owned, registered, and navigated according to law, and not of less burthen than 70 tons, (according to the rules for admeasurement prescribed by law), to the said islands of *Jersey*, *Guernsey*, *Alderney*, and *Sark*, any rum of the production or manufacture of the *British* colonies or plantations, in such quantities as shall be approved of and directed from time to time by the commissioners of H. M.'s treasury, or any three of them.

19 G.3. c.69.

By stat. 19 *G*.3. *c*.69. § 1. When any foreign brandy or other foreign spirituous liquors shall be imported from any part of *Europe*, in any vessel or cask which shall not contain 60 gallons, (excepting for the use of the seamen, not exceeding two gallons

for each man), not only the said brandy, &c. but also the ship or vessel in which imported, of whatever burthen, with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited. 19 G.3. c.69.

§ 4. Nothing herein shall extend to commanders of H. M.'s ships or transport vessels, with respect to foreign spirituous liquors put on board them, as allowance to the ships' companies, or troops on board.

§ 6. The ships and vessels forfeited by this act may be seized by any officer of customs or excise, and may be prosecuted, condemned, and recovered, as any other ships and vessels are directed to be by stat. 3 *G*.3. c.22.

By stat. 26 *G*.3. *c*.73. § 59. No foreign spirituous liquors (except rum of the growth or produce of the *British* plantations, and arrack,) shall be imported in any vessel or cask which shall contain less than 100 gallons, (excepting for the use of the seamen, not exceeding two gallons for each man,) upon pain of forfeiting the same, and also the ship or vessel in which imported, of whatever burthen, with all her guns, furniture, ammunition, tackle, and apparel. 26 G.3. c.73.

§ 60. No person shall import any foreign brandy, arrack, rum, spirits, or strong waters, of a greater degree of strength than that of one to nine over hydrometer proof; and if any foreign brandy, &c. shall be imported of any greater degree of strength, the same shall be forfeited, with the casks and packages, and may be seized by any officer of customs or excise: but nothing herein shall extend to the forfeiture of any rum or spirits of the growth, produce, and manufacture of the *British* sugar plantations, for being imported of any greater degree. Of what strength.

By stat. 23 *G*.3. *c*.70. § 1. No seller of or dealer in foreign spirituous liquors, residing within the limits of the head office of excise in *London* (not being a retailer duly licensed) shall be permitted to make entry of any warehouse, storehouse, room, shop, cellar, vault, or other place for keeping any foreign brandy, arrack, rum, spirits, or strong water; unless he shall inhabit in a tenement of 12*l*. a year or upwards, and for which he shall be assessed in his own name, and also pay to the parish rates; and in no other part of the kingdom, unless he be assessed and pay to church and poor; otherwise he shall be liable to forfeit as dealing therein without entry. 23 G.3. c.70. Places of keeping to be entered.

§ 2. And where any entry shall be made of any warehouse, &c. no other seller or dealer (not being a joint trader or partner with such seller or dealer), however qualified, shall make entry of the same, or of any other warehouse, &c. within the same house; on pain of being subject to the like penalties as dealers without entry. See also stat. 58 *G*.3. *c*.65. § 7.

By stat. 26 *G*.3. *c*.77. § 15. It shall be lawful for any excise officer by day or by night, with a constable, upon one hour's previous notice having been given to any importer or proprietor of rum or spirits of the growth or manufacture of the *British* sugar plantations, or left at his dwelling-house, or with his agent or servant, to enter his warehouses, and by tasting, gauging, or otherwise, to take an account of all rum or other liquors found therein, and take samples thereof not exceeding half a pint out of each cask, paying (if demanded), after the rate of 3*s*. a gallon. And if any such proprietor, his agent or servant, shall refuse to 26 G.3. c.77. Officers may enter and survey and take samples.

26 G.3. c.77. permit such officer to enter any such warehouse to take such account or samples, he shall forfeit 200*l*.

§ 16. Upon oath made by any person that he hath reason to suspect or believe, that such proprietor or importer of rum or other spirits lodged as aforesaid, doth intend, without the knowledge of the officer, in the night time, to go into such warehouse, or that such proprietor or importer, or other person, shall at any time actually be in such warehouse, without the privity or consent of such officer, one commissioner of excise within the bills, or one justice in any other part of *G. B.*, may issue his warrant requiring any officer of excise, with the assistance of a constable, or other peace officer, to enter such warehouse by force; and if such proprietor or importer, or other person, shall obstruct the said officer or his assistant from entering such warehouse, or executing such warrant, shall forfeit 200*l*.

Officer finding any increase or decrease. § 17. If any officer shall find in such warehouse any unfair *increase* or *decrease* in the stock of rum or spirits, such increase or decrease shall be deemed to have been made by the proprietor or importer having opened such warehouse not in the presence of the proper warehouse keeper, or officer of excise. And such proprietor or importer shall forfeit 500*l*.

17 G.3. c.52. By stat. 17 *G*.3. *c*.52. § 15. If such proprietor or importer shall, by any device or contrivance, open the warehouse, except in the presence of the proper warehouse keeper or excise officer, he shall forfeit 500*l*.

6 G.1. c.21. Permit for removal. By stat. 6 *G*.1. *c*.21. § 16. Where any spirituous liquors shall be sold in any entered warehouse, the officer shall, on request of the seller, (without fee) give the buyer a certificate signed by him, expressing the quantity, the name of the buyer and seller, and that the duty hath been paid, or that it hath been condemned as forfeited.

§ 17. No spirituous liquors, exceeding one gallon, shall be carried without such certificate or permit; on pain of forfeiting the same, with the casks and vessels.

11 G.1. c.30. By stat. 11 *G*.1. *c*.30. § 10. If any person shall take out a permit and not remove the liquors accordingly, nor return the permit, he shall forfeit for every gallon treble value: And if upon such non-return there appear not a sufficient decrease in the stock to answer the quantity in the permit, the officer may seize so much as will answer the quantity. But no person shall receive a permit, without direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50*l*., and in default of payment, three months' imprisonment.

8 G.1. c.18. By stat. 8 *G*.1. *c*.18. § 13. No foreign spirits or strong waters, although under one gallon, shall be received into the custody of any retailer without a permit, signifying that the duties were paid, or that they had been condemned; on pain of forfeiting the same, and the cask or other vessel wherein found.

23 G.3. c.70. And for the better preventing foreign spirituous liquors that have been illegally imported from being removed from the sea-coasts into the stocks of entered dealers or others, by stat. 23 *G*.3. *c*.70. § 3. no seller or dealer shall be allowed to take out more than one permit in one day to one person, except as therein-after is excepted; which permit shall be granted for the removal of no more than one cask or other package of any foreign spirituous liquors,

of one kind or species, directed to one and the same person. And if any shall be found removing or removed contrary hereto, with or without a permit, the same shall be forfeited. 23 G.3. c.70.

§ 4. Provided, that several permits may be taken out, and casks containing foreign spirituous liquors of the same kind or species, sent to the same person the same day; so as each cask be sent under different permits and by different conveyances.

§ 5. Nothing herein shall prevent dealers from sending with one permit by one and the same conveyance any number of casks containing 60 gallons each or upwards of the same kind.

§ 6. If any foreign spirits, not being in casks of 60 gallons or upwards, shall be found removing, unless at the following times, that is, from *Sept.* 29 to *March* 25 yearly, between the hours of seven in the morning and five in the evening, and from *March* 25 to *Sept.* 29, between the hours of five in the morning and seven in the evening (except the same is carrying by a known common stage coach, waggon, or other stage carriage which usually travels out of those hours); the same, whether accompanied with or without a permit, and the cattle and carriages made use of in removing the same, shall be forfeited, and may be seized by any officer of excise.

By stat 26 *G.*3. *c.*73. § 58. No foreign spirits or strong waters more than 60 gallons shall be brought to *London* by one permit, or by one conveyance, at the same time, from any part of *England* by land or water (except by way of *Gravesend* to the port of *London* in the ordinary course of commerce); on pain of being seized and forfeited. 26 G.3. c.73.

By stat. 23 *G.*3. *c.*70. § 7. When any dealer shall send a request note to a permit writer, he shall specify therein the quality or kind of such foreign spirituous liquors intended to be removed with each permit, the contents of the cask or other package, and whether the same is to be removed by land or water, and by what mode of conveyance; otherwise such request note shall be void, and no permit shall be granted thereon. 23 G.3. c.70.

§ 10. If any person shall counterfeit such permit, or give or receive any false permit, or alter any granted by the proper officer, he shall forfeit 500*l.* to be recovered in the courts at *Westminster.*

By stat. 57 *G.*3. *c.*123. § 13. And distiller or rectifier of, or dealer in, or retailer of spirits in *England,* who shall deliver or receive any spirits, for the removal of which a permit is by law required, without such permit, or a greater quantity of spirits, or of a different kind or quality than expressed in the permit, or, having obtained such permit, shall not send therewith the spirits therein described, or return the permit within the time by law required; and every person who shall sell, lend, or make use of, or cause or suffer any such permit, or any other permit granted under any law of excise, to be sold, lent, or made use of, for any other purpose than to accompany the removal of the spirits or goods for which the same was granted, or shall produce or cause the same to be produced to any officer or person, as having been received with any goods other than as aforesaid, or shall use or cause to be used any permit, so that any account kept by the officers of excise by such permit may be frustrated or evaded, he shall forfeit 500*l.* over all other penalties and forfeitures; and every permit used for any purpose other than to accompany the spirits or goods for which it was

57 G.3. c.123. Penalty on frustrating the purpose of a permit in the removal of spirits, 500*l.*, &c.

57 G.3. c.123. granted, shall be deemed a false permit, and such use shall, over all other penalties and forfeitures, subject the person so using the same, to the penalties and forfeitures for using any false permit.

48 G.3. c.84. Unlicensed persons offering for sale any spirits, without permit, and hawkers, &c. so offering for sale spirits, though they have permits, may be stopped, and taken before a justice.

By stat. 48 *G.*3. *c.*84. § 7. If any person shall offer for sale any brandy or other foreign spirits, not being licensed to deal therein, and not having a permit for the same, or if any hawker, pedlar, petty chapman, or other trading person going from town to town, or to other men's houses, and trading either on foot, or with any horse or other cattle or otherwise, shall offer for sale any brandy, &c. although he shall have a permit for the same, the person to whom such offer is made may detain such person, and seize all such brandy, &c. and carry the same to the next customs or excise warehouse; and carry the person so offering before any one justice, who may thereupon require such person to enter into recognizance in manner directed by stat. 45 *G.* 3. *c.*121. § 2., and such person shall thereupon be subject to all the provisions in the said act contained in relation to recognizances taken from persons seized as smugglers, and (if the offender shall be a subject of H. M., and a seaman, or sea-faring man, and capable of serving in H. M's. navy,) may send such person to the custody of some officer of the impress service, by him to be dealt with according to the 47 *G.*3. *st.*2. *c.*66. § 36. &c.: or otherwise to be by such justice committed to prison, and prosecuted for the penalties and forfeitures incurred for such offence. And such brandy, &c. may be prosecuted in the name of the person who so stopped and seized the same, in like manner as if seized by an officer of the customs or excise. And after condemnation of the goods, or commitment of the offender, the persons having seized such goods and detained such persons so offering the same for sale, shall be entitled to 5*l.*, if a moiety shall not exceed 5*l.*, and if a moiety of such value shall exceed 5*l.*, then a moiety of such value.

(*b*) Concerning Spirits made in England, and therein of *Distillers, Compounders,* and *Rectifiers.*

59 G.3. c.53. Certain duties of excise are imposed upon *British* spirits by 59 *G.*3. *c.*53.

43 G.3. c.69. Distillers, rectifiers, and retailers to be licensed.

	£	s.	d.
By stat. 43 *G.*3. *c.*69. *Sched.* (A). Every *distiller* or maker of *low wines* or *spirits* for sale, or exportation, within *England*, shall take out a licence, for which he shall pay the annual sum of - - -	10	0	0
(55 G.3. c.30. 3 G.4. c.27.) And by stat. 55 *G.*3. *c.*30. (continued until 5th *July*, 1826, by stat. 3 *G.*4. *c.*27.) The further sum of - -	10	0	0
And every *rectifier* of spirits within *England* shall pay for such licence a duty of - - -	5	0	0
(55 G.3. c.30.) And by stat. 55 *G.*3. *c.*30. (continued as above mentioned) The further sum of - - - - - -	5	0	0

53 G.3. c.103. Transfer of licences.

By stat. 53 *G.*3. *c.*103. Upon the death of any person licensed, or upon the removal of any person from the house or premises in which his licence shall authorize him to make or manufacture, deal in, vend, or sell, any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorise the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person

removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted.

And by stat. 24 *G.*3. *sess.*2. *c.*41. § 1. 7. Such licence shall be renewed annually ten days before the end of the year, on pain of forfeiting, if a corn distiller, 200*l.*; if a melass distiller or rectifier, 30*l.* 24 G.3. sess. 2. c.41.

By stat. 26 *G.*3. *c.*73. § 15. No person shall be deemed a *rectifier* or *compounder*, who shall not have an entered still capable of containing in the body thereof, exclusive of the head, 120 gallons; nor unless such still shall have suitable tubs and worms affixed thereto, and shall be *bonâ fide* used for rectifying *British* spirits for sale. 26 G.3. c.73. Who shall be deemed rectifiers or compounders.

By stat. 19 *G.*3. *c.*50. § 6. Every maker, distiller, rectifier, and compounder shall cause to be painted in durable, large, and legible characters, over the outward door of every still-house, storehouse, or other place used by him for making or keeping *British*-made spirits, the words *Distiller, Rectifier,* or *Compounder of spirituous liquors* (as the case may be); on pain of forfeiting for every such place not having such words so painted 100*l.* § 9. And if any person shall put up such words without having duly made entry of all the places by him used for making or keeping such spirits, he shall forfeit 200*l.*, and be subject to the several penalties and forfeitures to which persons making spirituous liquors for sale without making entry are subject. 19 G.3. c.50. Certain words to be painted over door.

§ 7. If any distiller, &c. or dealer shall receive, buy, or procure any *British*-made spirits (except at the public sales of condemned spirits by the commissioners of excise) of any person other than a maker, &c. not having the said words painted over such door; he shall forfeit 50*l.* § 8. And in this case, either the buyer or seller informing against the other shall be discharged of his own penalty. Buying British spirits.

By stat 21 *G.*3. *c.*55. § 37, 38, 39. The penalty is increased to 500*l.* But not to be prosecuted both by this and by any former act; and the seller informing against the buyer shall be discharged of his own penalty. 21 G.3. c.55.

By stat. 19 *G.*3. *c.*50. § 3. No person shall be permitted to make entry of any workhouse or place, or of any still or utensil for making, distilling, or keeping of low wines or spirits, unless he shall occupy a tenement of 10*l.* a year, and be assessed for the same in his own name, and also pay to the parish rates where he shall reside. And no entry shall be of any avail to any person not so qualified, nor for any longer time than he shall be so qualified. Entry of houses and vessels for distillation.

By stat. 21 *G.*3. *c.*55. § 34, 35., In order to prevent private distillations, every person who shall make or distil any low wines or spirits, whether for sale or not for sale, shall be deemed a common distiller for sale, and shall enter his still and vessels by him used for the making of wash, low wines, or spirits at the next office of excise; and every person making or keeping any wash fit for distillation of low wines and spirits, and having in his custody any still, shall also be deemed a common distiller for sale, and liable to the several duties, and to the penalties, &c. imposed by acts relating to distillers. 21 G.3. c.55. Who deemed common distiller for sale.

By stat. 26 *G.*3. *c.*73. § 53. Every person occupying any house, whether he be the owner or renter thereof or not, who shall knowingly permit any private back or still to be set up or used in 26 G.3. c.73. Occupiers of houses permit-

26 G.3 c.73. any part of such house, or any building thereto belonging, for the making of wort, wash, or other liquors for distillation of any low wines or spirits, without entry having been made thereof, and being duly licensed, shall be subject to the like penalties (*a*), &c. as persons *using* such still.

ting stills to be set up.

8&9W.3. c.19. By stat. 8&9 *W*.3. *c*.19. § 10. No common distiller or maker of low wines, spirits, or strong waters, for sale, shall set up any tun, cask, washbatch, copper, still, or other vessel, for brewing, making, or keeping any wort, wash, low wines, spirits, or strong waters, nor alter or enlarge the same, nor shall have any of the same private or concealed, nor any private or concealed warehouse, storehouse, cellar, or other place for brewing, making, laying, or keeping any the said liquors, without first giving notice at the next office of excise; on pain of 20*l*. for every tun, &c. or other place so erected or set up, altered or enlarged, kept private or concealed; and he in whose occupation any of the same shall be, shall forfeit 50*l*.

24 G.2. c.40. By stat. 24 *G*.2. *c*.40. § 18. Every distiller or maker of low wines shall, 10 days before he distils or makes any spirituous liquors, make entry at the next office of excise of every still, copper, tun, washbatch, cask, or other vessel which he shall make use of for brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, spirits, or strong waters, and also of the vessels used for brewing, holding, or keeping the after-runnings or feints from the second extraction (which last-mentioned vessels shall not at any one time exceed two in number), and also of all such new utensils as he shall make use of for the purposes aforesaid, on pain of 50*l*. for every such still or other vessel used and not entered.

26 G.3. c.73. made perpetual by 35 G.3. c.89. By stat 26 *G*.3. *c*.73. § 3. Every distiller shall, four days before he begins to brew any corn or grain, or mix any other materials for making of wash to be distilled into low wines, make entry (according to a schedule annexed to the act) at the next excise office, of all coppers, &c. and vessels which he shall make use of for the brewing, mixing, fermenting, working, distilling, holding, laying, or keeping any wort, wash, low wines, or any spirits or feints; and shall in such entry insert the day when he intends to begin to brew or mix, and shall specify the use and purpose to which each such copper, &c. is intended to be applied; and the same shall not be used or applied to any other purpose than is specified in such entry; on pain of forfeiting 100*l*. together with all such wort or other liquor found in any such copper, &c. which may be seized by any officer of excise. See also 58 *G*.3. *c*.65. § 7.

21 G.3. c.55. By stat. 21 *G*.3. *c*.55. § 36. No person shall make use of any vessel, washbatch, or other utensil, nor any other room or place, for making wash for the distillation of low wines and spirits, without first giving notice at the next excise office; on pain of 50*l*. for every vessel, room, or place so made use of without notice.

23 G.3. c.70. 26 G.3. c.73. Withdrawing or changing the entry. By stats. 23 *G*.3. *c*.70. § 25, 26. — 26 *G*.3. *c*.73. § 4. No distiller, or maker, or compounder, or rectifier shall be allowed to withdraw his entry, whilst any duty is depending, or any utensils for brew-

(*a*) The offence herein described is subject to the penalty of 20*l*. (see stat. 3 & 4 *W*. & *M*. *c*.15, § 1.) and not 200*l*.; and therefore a conviction for such an offence in the latter penalty was quashed. *Rex* v. *Bond*, 1 *B*. & *A*. 390.

ing, fermenting, or distilling, shall be standing. But nothing herein shall extend to prevent the changing of any entry from the name of one owner to a subsequent owner; or from an entry for making spirits for home consumption to spirits for exportation, or from making spirits from one sort of materials to another sort; so that every such new entry be made on the same day on which such former entry was withdrawn, otherwise such former entry shall continue in force.

By stat. 2 *G*.3. *c*.5. No distiller or rectifier for sale, or dealer in spirituous liquors, shall have any still or stills which, separately or together, shall contain less than 100 gallons, on pain to forfeit for every such still 100*l*. And such stills containing separately less than 100 gallons, shall be placed in one room, under the like penalty. 2 G.3. c.5. Size of the stills.

By stat. 14 *G*.3. *c*.73. § 2. No distiller of low wines or spirits for sale shall have any wash still which shall contain less than 400 gallons in the body, exclusive of the head; nor any low wine still which shall contain less than 100 gallons in the body, exclusive of the head on pain of forfeiting 100*l*. 14 G.3. c.73.

By stat. 19 *G*.3. *c*.50. § 1. Whereas the duties on low wines and spirits are greatly diminished by means of small stills privately made use of, it is therefore enacted, that every person keeping any wash fit for distillation, and having in his occupation, possession, or custody any still, the cubic contents of which when the head is on, will amount to two gallons, proof thereof being made by the oath of one witness before one commissioner of excise, or one justice, shall be deemed a common distiller for sale, and liable to the survey, duties, penalties, &c. 19 G.3. c.50.

And by stat. 24 *G*.2. *c*.40. § 18. The distiller shall shew to the gauger or officer who surveys, every still or other vessel entered, and the officer shall mark the same with a particular and durable mark; and every vessel used by such distiller, without being so shewn or marked, shall be deemed a vessil or utensil of which no entry has been made; and if any person shall rub out or deface such mark, he shall forfeit 20*l*. 24 G.2, c.40. The same to be marked.

By stat. 26 *G*.3. *c*.73. § 5. Every fermenting *washback* shall have a hole or dipping place in the top thereof, and shall be so constructed that the officer may conveniently take his dip or gauge at such hole; and shall be so placed that the top thereof shall be beneath the level of the charging cock of the wash-still: on pain of 200*l*. 26 G.3. c.73. Wash-backs how to be constructed.

§ 6. After the washback shall be quite empty, and before any such washback shall be fresh limed, such distiller shall give, if within the bills, four hours', elsewhere eight hours' notice in writing to the officer of excise, before he shall begin to lime the same; and if he shall not begin within one hour after the time mentioned in such notice, the same shall be void, and he shall give a fresh notice, on pain of 50*l*. When fresh limed.

By stat. 10&11 *W*.3. *c*.4. § 7. If any officer of excise shall have cause to suspect any private still, back, or other vessel, spirits, low wines, wash, or other materials prepared for distillation, to be set up or kept in any place, and shall make affidavit before a justice of the peace, and therein declare the grounds of his suspicion, he may in the day time, and in presence of a constable, by warr[illegible] from such justice to be directed to such officer of excis[illegible] [illegible]reak 10 & 11 W.3. c.4. Private still

10 & 11 W.3. c.4. open the door, or any part of such suspected house or place, and enter and seize the same, and detain them there; and if they shall not in 20 days be claimed by the owner, they shall be forfeited and sold at the next general day of sale; and if they be claimed in 20 days, the person claiming shall forfeit for every warehouse or other place in which any such still, back, or other vessel shall be found, and also for every such still, back, and other vessel found therein, 200*l.* And by the 10&11 *W.*3. *c.*21. § 23. He shall incur this forfeiture, whether he shall make any such claim or not. 10 & 11 W.3. c.21.

19 G.3. c.50. Officers discovering private still, &c. may seize. By stat. 19 *G.*3. *c.*50. § 2. If any officer of excise shall at any time discover any private or concealed still, back, or other vessel for the making, preparing, or keeping of wash, low wines, or spirits, or other materials preparing for distillation, he may (that is, without applying to a justice) seize such still, back, or vessel, and all such low wines or spirits, and either detain them in the house where found, or remove them to the next office of excise; and if they shall not within ten days next after the seizure be claimed by the owner, the same shall be forfeited; and the proprietor of any such private or concealed back, still, or other vessel, or the person in whose custody the same shall be found, shall forfeit for every place wherein such private still, back, and other vessel shall be found, and also for every such still, back, and other vessel found therein, the sum of 200*l.* And if any person shall obstruct the officer in seizing or removing after seizure, he shall forfeit 100*l.* Penalty.

Rex v. *Chandler*, 14 *East*, 267. — Conviction of defendant by two justices for having in his custody and possession a private still contrary to stat. 19 *G.*3. *c.*50. § 2. It appeared from the evidence of an excise officer, that on the 28th of *March*, 1811, he went in company with certain assistants to the defendant's house at *Edmonton*, in the county of *Middlesex*, to search the same, by virtue of a magistrate's warrant; that he found under a pig-stye in the garden of the said house, a private still, complete, just worked off, a worm-tub and worm, and six washbacks, &c. containing 150 gallons of wash, &c. — *Objection.* The evidence does not support the charge that the still was found in the custody and possession of the defendant; it is only proved to have been found in the garden of his house; it might have been put there by some other person; it is not even stated that the garden was in the defendant's possession. It was said (*arguendo*) in *Rex v. Abbott*, 2 *Doug.* 553. that where goods are found in the house of the party, the knowledge shall be presumed. If they are found in his grounds, some direct evidence of his knowledge must be given. If they are found in an out-house belonging to him, the presumption shall not arise, unless it is shewn that he himself kept the key. — *Grose* J. It is found concealed in the garden of his house, with the appearance of having been recently worked; was not this evidence sufficient for the magistrates, who in these cases are put in the place of a jury, to find the fact, that it was in the defendant's custody and possession. — *Le Blanc* J. observed that it was not stated that the defendant was either in the house, or near the spot at the time. — *Lord Ellenborough* C. J. gave no opinion upon the point. The conviction was *quashed*, it not appearing that the garden was in the county of *Middlesex*, and within the jurisdiction of the convicting magistrates.

By stat. 23 *G*.3. *c*.70. § 13, 14. Whereas notwithstanding the many laws to prevent the private distillation of low wines and spirits, evil-minded persons do privately make spirits; if any officer of excise shall know, or have cause to suspect, that any private or concealed still, back, or other vessel, spirits, low wines, wash, or other materials preparing for distillation, are set up or kept in any house or place; and if the same be within the limits of the head office in *London*, shall make oath thereof before a justice, or two of the commissioners, and elsewhere before a justice of the county or place, setting forth the ground of his suspicion, they may by their warrant empower such officer, by day or night, (but if in the night, in presence of a constable or other peace officer), to break open the doors, or any part of such house, and seize the same; and either to detain them there, or remove them to the next excise office; and if not claimed in ten days, the same shall be forfeited, and the proprietor or person in whose custody they shall be found shall forfeit for every place in which such private still, &c. shall be found, and also for every such still, &c. 200*l*.; and any person obstructing such officer in the search, shall in like manner forfeit 200*l*. And (§ 14.) when any officer shall discover any private or concealed still, back, or vessel, and shall at the same time discover in the room or place where such private still, &c. shall be found, any person knowingly aiding in carrying on such distillation, he shall forfeit, over and above all other penalties, 30*l*.; and the officer may arrest such person so discovered, and convey him before a justice, who may convict upon confession or oath of one witness, and immediately upon conviction the person convicted shall pay 30*l*. into the hands of the officer; and upon non-payment, the justice shall by warrant commit him to the house of correction, to be kept to hard labour for six months from the day of the conviction, not to be discharged until payment of the 30*l*., or expiration of the six months. In case of a second conviction, he shall pay 60*l*. and be committed for twelve months, or until payment of the 60*l*.

23 G.3. c.70.

Officer knowing of or suspecting private still, &c. within limits, to make oath thereof before a justice, or commissioners.

Special warrant to break open suspected house and seize stills, which if not claimed within 10 days are forfeited.

Aiding in private distillation.

Penalty.

But by stat. 10&11 *W*.3. *c*.4. § 8. If on breaking open any such door or house no such private back, still, or other vessel, spirits, low wines, wash, or other materials for distillation shall be found, the officer shall make good the house or place so broken up, or make satisfaction to the owner, to be adjudged by the two next justices (1 *Q*.); or the party injured may bring his action for the damages; and the same shall be paid by the commissioners out of the revenue of excise; and if any person shall obstruct such officer he shall forfeit 200*l*.

10 & 11 W.3. c.4.

And by stat. 23 *G*.3. *c*.70. § 15. For the more effectually preventing the removal of spirits that have been privately distilled from the places where made to the houses of rectifiers and compounders, the officers may seize all horses, carriages, and boats employed in removing the same from one part of the kingdom to another, unless they be accompanied with regular permits.

23 G.3. c.70. Removing spirits privately distilled.

By stat. 10&11 *W*.3. *c*.4. § 3. No distiller shall have or keep any private pipe, stop-cock, or other conveyance, by which any wash or other liquors fit for distillation may be conveyed from one back or other vessel to another, or from any such back or other vessel to his still, or into any other place, nor shall have or keep any hole in any back, or wash-batch, by which any wash or other

10&11 W.3. c.4. Private pipes or conveyances.

10&11 W.3. c.4. liquor fit for distillation may be conveyed into or out of the same, on pain of 100*l.* for every such pipe, stop-cock, conveyance and hole.

§ 4. The excise officer, in the day-time, and in presence of a constable, on request made and cause declared, may break up the ground in any distilling-house, or the ground near adjoining, or any wall, partition, or other place, to search; and on finding such pipe or other conveyance, may break up the ground, house, wall, partition, or other place, through or into which any such pipe or other conveyance shall lead, and may break up or cut any such pipe or other conveyance, and may turn any cock to try whether such pipe, or other conveyance may convey any wash or other liquor fit for distillation, out of one back or vessel into another, or from any such back or vessel into any still, or into any other place.

§ 5. If no such pipe or private conveyance be found, the officer shall make good the ground, wall, house, or other place, or make reasonable satisfaction to the owner, to be adjudged by the two next justices (1 *Q.*); or the party injured may bring his action for damages; the same to be paid by the commissioners out of the revenue of excise; and if any person obstruct such officer, he shall forfeit 100*l.*

§ 6. But any distiller may use any pipe, stop-cock, or other conveyance above ground, in open and public view from one end to the other, for letting his wash out of the coolers into his backs or wash-batches, and for conveying the wash or worts out of the back or wash-batch into his public still.

12 G.3. c.46. By stat. 12 *G.3. c.*46. § 16. No such distiller or maker shall have any pipe or conveyance to the low wine-stills from any other vessel or utensil, except the known and entered low wine cask; on pain of 100*l.* for every such conveyance.

§ 18. If any person shall open any still-head, charge-cock, or wash-pump, after the same shall have been locked and secured as aforesaid, before the same shall have been opened by the officer of excise; or shall wilfully hurt or damage any such lock or other fastening; he shall forfeit 200*l.*

23 G.3. c.70. By stat. 23 *G.3. c.*70. § 23. No distiller shall have any fixed pipe or other conveyance leading to or from any still, except one charging-pipe to each still; nor any conveyance leading from such still, except the discharge-cock to each still belonging; on pain of 200*l.*

26 G.3. c.73. By stat. 26 *G.3. c.*73. § 13. No distiller, rectifier, or compounder, shall have any pipe or conveyance communicating with the worm belonging to any still, on pain of forfeiting 100*l.*

§ 17. No distiller shall have any pipe, conveyance, or opening, leading to his wash-still, except the known charging-pipe leading from his known wash-back, and the same shall empty itself in a shute, open trunk, or vessel, which shall not be more than six feet distance from the still, and shall be at least two feet long, one broad, and not more than two feet deep, from which shute, &c. the conveyance pipe into the wash-still shall be straight, and not concealed from the view of the officer, nor of a larger size than six inches diameter in the clear; on pain of 200*l.* for every such pipe, &c.

14 G.3. c.73. Holes or open- By stat. 14 *G.3. c.*73. § 3. 5. Every distiller, rectifier, and compounder, shall make (with the approbation of the surveyor or su-

pervisor) a hole or opening in the breast of every still, that the officers may take gauges and samples; which hole or opening in the wash-still shall not be more than five inches square, and so contrived that the officers may take gauges thereof with a cork and rule; and in every other still, not being a wash-still, the hole or opening shall not be less than one inch and a half in diameter, and so contrived that the officers may take samples from the still with a phial, to be drawn perpendicularly through the same. And if he shall presume to distil, rectify, or compound any spirits before such holes or openings be made, he shall forfeit 50*l.* 14 G.3. c.73. — ings to be in the breast of the still.

For the preventing of frauds being carried on by means of trunks and other close vessels set up by distillers for receiving wash and other materials fit for distillation from the wash-backs and other utensils, before the same is pumped up into their stills, by stat. 23 *G.*3. *c.*70. § 16. every distiller, whether for sale or exportation, having any such trunk or other close vessel, shall demolish or convert the same into open vessels; and if he shall hereafter erect any such, he shall forfeit 100*l.* 23 G.3. c.70. Trunks and other close vessels to be demolished.

§ 16. To the end that the officers may be able to taste and examine the quality of the low wines and spirits coming from the still, every distiller, &c. shall cut off or take away all pipes fixed to the end of the worms belonging to their stills; and if he shall fix any there for the future, he shall forfeit 100*l.* Pipes at the end of still-worms to be demolished.

By stats. 12 *G.*3. *c.*46. § 10. 16.—14 *G.*3. *c.*73. § 1. Every distiller, rectifier, and compounder shall, at his own expence, provide and affix sufficient fastenings (to be approved of in writing under the hand of the surveyor or supervisor) to the head of every low wine-still, wash-still, wash-pumps, and charging-cocks, through which worts or wash are conveyed into such still; which said still-heads, charging-cocks, and wash-pumps, shall from time to time be securely locked and sealed by the surveyor, and the locks and keys for securing the said still-heads, charging-cocks, and wash-pumps, shall be provided by the surveyor or supervisor, at the expence of the distiller. And if the distiller shall presume to distil before he hath affixed such fastenings, he shall forfeit 50*l.* 12 G.3. c.46. 14 G.3. c.73. Locks on the still-heads.

By stat. 14 *G.*3. *c.*73. § 3. 5. The holes or openings in the breast of the still shall, in like manner, be locked and secured, under the same rules, regulations, and penalties, as for securing the still-heads. 14 G.3. c.73. Locks on the holes or openings.

By stats. 14 *G.*3. *c.*73. § 5.—26 *G.*3. *c.*73. § 9, 10. Every distiller and maker for sale, shall, at his own expence, provide and affix sufficient locks, keys, and fastenings, (to be approved of in writing under the hand of the surveyor or supervisor,) to the discharge-cock of every still, and the officer shall be permitted to lock and secure such discharge-cock at any time when such still shall be at work; and every distiller shall, when required by the general surveyor, if in *London*, elsewhere by the surveyor or supervisor of the division, immediately repair and alter all such locks and fastenings; and in default thereof, shall for every neglect forfeit 50*l.* 14 G.3. c.73. 26 G.3. c.73. Locks on the charging and discharging cocks.

By stat. 57 *G.*3. *c.*123. § 10. Proper fastenings and locks shall be provided for the discharge plugs, pipes, and cocks of every wash-back used by any distiller in *England*, to the satisfaction of the proper officer of excise, at the expence of the distiller. 57 G.3. c.123.

By stat. 23 *G.*3. *c.*70. § 17. The discharge-cocks shall be so fixed 23 G.3. c.70.

23 G.3. c.70. in the body of each still as that the officers may have convenient access to the same; and for that purpose every such discharge-cock shall be continued in a straight line from the body of the still, and not project more than 3 feet from the body of the still, nor more than 18 inches from the brick-work or other materials whereon the still shall be placed; on pain that every distiller shall forfeit 100*l.*

§ 18. The keys of every charging and discharging-cock shall be made in manner following: that is, the key shall be made with an open eye or hole in the top part thereof, which eye shall be of such a size as to be capable of receiving a lever sufficient to turn the cock; and such charging-cocks and discharge-cocks shall not have any hole or place of discharge, but at the mouth only; and no grate, strainer, or other thing, shall be placed before the mouth of any such charge or discharge-cock; on pain that every distiller offending herein shall forfeit 100*l.*

26 G.3. c.73. By stat. 26 *G.*3. *c.*73. § 12. No distiller, maker, rectifier, or compounder shall rivet any key into any charge or discharge-cock, so as to prevent the officer from taking out and examining such key; on the penalty of 50*l.*

§ 14. No distiller, &c. shall have any cap or covering upon any cock belonging to any still, pipe, back, or other vessel, so as to prevent the officer from seeing and easily examining such cock; on pain of 50*l.*

14 G.3. c.73. Locks on the furnace door of still.

By stat. 14 *G.*3. *c.*73. § 4, 5. Every distiller, maker, rectifier, and compounder shall, on the like pain, at his own expence, provide and affix sufficient locks, keys, and fastenings (to be approved of in like manner) to the furnace door of each still; and the officers shall be permitted to lock and secure the said furnace doors, at any time when the stills are not at work.

Penalty of opening or damaging such locks.

§ 12. If any person shall, by any means or device, open any fastening on the holes or openings in the breast of the still, or any discharge-cock, or furnace door, after the same shall have been locked or secured by the officer; or shall wilfully hurt or damage any lock or other fastening; he shall forfeit 200*l.*

23 G.3. c.70. Ladders to be provided.

By stat. 23 *G.*3. *c.*70. § 21. The distiller shall provide proper ladders, whereby the officers may get to the top of each still, and shall by himself or some person on his behalf assist such officer in setting up the ladder and examining the contents of each still, and taking still gauges thereof; on pain of 200*l.* for each offence.

24 G.2. c.40. Notice of taking in materials.

By stat. 24 *G.*2. *c.*40. § 20. The distiller or maker of low wines or spirits within the bills, shall 24 hours at least, and elsewhere 48 hours, before he receive any quantity of wine, cyder, sugar, water, or any kind of fermented wash, into his custody, give notice to the officer of excise of the quantity and species, and when he intends to receive the same; on pain of 50*l.*

12 G.3. c.46. Notice of beginning to work.

By stat. 12 *G.*3. *c.*46. § 12. 13. When any distiller, &c. whose still-house is situate in *London* or *Westminster*, or in any city, shall be desirous of opening or charging his still, he shall give to the officer notice in writing four hours before he intends to begin; but, if he intends to begin between twelve at night and six in the morning, he shall give twelve hours' like notice. And every distiller whose still-house is not so situated, shall give twelve hours' notice in writing at the next office of excise, or to the proper officer,

of his intention of opening or charging his still. And if he shall not begin to charge his still at the hour mentioned in the notice, or within two hours after, the notice shall be void; and he shall be obliged to give a fresh notice. 12 G.3. c.46.

By stat. 14 *G*.3. *c*.73. § 6. The like notice shall be given, when such *corn* distiller shall be desirous to have the furnace door of his still unlocked. 14 G.3. c.73.

§ 6. When any distiller or maker of low wines or spirits from *melasses or other materials, not being corn or grain,* or any rectifier or compounder of spirits, shall be desirous to charge his wash-still, he shall within the bills give to the officer notice in writing four hours at least, and elsewhere eight hours, of the particular hour or time of the day when he intends to charge such still. And when he is desirous to have the furnace of his still opened, he shall if within the bills give 12 hours' notice, and elsewhere 24 hours', of the particular hour or time of the day or night when he intends to have the same opened; which notices for charging the wash-stills of such distillers of melasses or other materials, not being corn or grain, and also for opening the furnace doors, shall be given at the times following; *viz.* from *Sept.* 29. to *Mar.* 25. yearly, between the hours of seven in the morning and five in the evening: and from *Mar.* 25. to *Sept.* 29. between the hours of five in the morning and five in the evening:—And if such distiller shall not begin to charge his wash-still at the time mentioned in such notice, or within one hour after, the notice shall be void, and he shall be obliged to give another like notice before the officer shall be obliged to attend.

§ 7, 8. Every distiller and maker, in the notice of his intention to charge his wash-still, shall express the particular wash-batch or wash-batches from which he intends to charge his still, describing the number and marks thereof; otherwise the notice shall be void. And if he shall charge his wash-still from any wash-batch not mentioned in such notice, or shall take out of any still any feints or spent wash contrary to the directions of this act, he shall, for each offence, forfeit 100*l*.

§ 11. Provided, that where notices are given by more than one distiller, rectifier, or compounder, each of them expressing the same hour of time for the officer to attend, it shall be sufficient if he attend at the workhouse of any one of them, according to the notice, or within one hour after.

By stat. 23 *G*.3. *c*.70. § 22. For the further preventing frauds, the officer shall be permitted to take samples of the wash in any wash-back or other vessel, not exceeding 12 gallons in the whole, out of each such wash-back or vessel, paying for the same at the rate of 1*s*. 6*d*. a gallon; and if the distiller shall obstruct or hinder him, he shall forfeit 100*l*. 23 G.3. c.70. Officers may take samples of wash.

§ 24. If any corn distiller, or maker of low wines or spirits from corn or grain, shall make use of any melasses, coarse sugar, honey, or any composition or extract of sugar, in the brewing, making, or preparing wash for distillation, or in making or extracting low wines or spirits, or shall receive into his custody, any quantity of melasses, coarse sugar, honey, or any composition or extract of sugar, exceeding 10lbs.; he shall forfeit for every offence 100*l*. And every servant or other person who shall assist therein, shall forfeit 20*l*. and in default of payment shall suffer three months' imprisonment. Distiller using improper materials in preparing wash, &c.

33 G.2. c.9. By stat. 33 *G.2. c.9.* § 15. If any distiller, in preparing his grist for wash, in order for distillation, shall use more wheat than in the proportion of one quarter of wheat to two quarters of any other grain; he shall forfeit 50*l.*

12 G.3. c.46. Officer to attend and survey. Satisfying officer that wash-still is empty. And by stat. 12 *G.3. c.46.* § 14. The officer shall from time to time attend, according to the notice given. And as soon as the officer shall be at the still-house, the distiller shall turn the discharge-cock of every wash-still, that the officer may be satisfied that such wash-still is really empty; and then, and not before, the officer shall open the stills, cocks, and pumps so locked and secured, and shall continue in the still-house all the time that such wash-still shall be charging; and when the same shall be fully charged, shall immediately lock and secure as before all the still-heads, wash-pumps, and charging-cocks, and shall leave them so locked and secured at all times.

Repairing still-heads, &c. § 15. And so often as it shall be found necessary to have such still-heads or charge-cocks or wash-pumps open for repairing or mending the same, the officer shall attend all the time the workmen shall be employed in such repairing; but shall lock the same every night so soon as they shall leave off work; and shall attend at six o'clock each morning, whilst the repairs are doing, to open the said stills, charge-cocks, and pumps.

14 G.3. c.73. Lighting fire, opening furnace door. By the 14 *G.3. c.73.* § 4. Whenever the distiller or maker shall be desirous to light a fire under the still, and to have the furnace door opened, the officer shall attend according to the notice given, and open the same. See stat. 23 *G.3. c.70.* § 20. *post*, 280.

Officers may take still gauges and samples, paying for the same. § 9. And the officer shall be permitted to take still gauges, as well of spent wash and feints as of the charge of the wash-still, at any time after the still is charged, and before it comes to work; and also to take samples of the same at any time after the still is charged, and before it comes to work, and also after the still is off, paying if demanded after the rate of 1*s.* 6*d.* a gallon for the wash, and 4*d.* a gallon for spent wash and feints. More wash put in still than can be accounted for, double duty. And if, in taking such gauge or sample, he shall discover that any wash hath been put into any still except the known wash-still, or into the wash-still without such notice as aforesaid; or shall find any increase in such still more than can be accounted for by the compare with the decrease from the wash-batch expressed in the notice: or if, on comparing the quantity of low wines charged with the spent wash remaining in the wash-still, he shall find a greater proportion than could arise from the quantity of wash taken account of in the wash-batches pumped into the wash-still; such increase shall be deemed to be made from some wash-batch not mentioned in the notice, and the officer shall charge the distiller with double duty from the presumptive charge; Allowance for feints, &c. and no allowance shall be made to him for any feints, water, or other liquor, on any pretence put into the wash-still, but such as shall have been put therein in the view of the officer.

Other than known wash found in still. § 10. If the officer shall discover at the still-house, in any still other than the known wash-still, any wash put into or mixed with the low wines or spirits in such still, every distiller, rectifier, or compounder offending therein, shall forfeit 100*l.*

Obstructing officers. § 13. If any person shall obstruct any officer in the execution of this act, he shall forfeit 100*l.*

By stat. 53 *G*. 3. *c*. 147. § 1. No distiller shall, at the same time, keep in any cask used for a low wine cask, any low wines or spirits extracted from different stills, unless such stills shall have been charged with wash at the same time, and also worked off at the same time, nor shall keep in any low wine cask, any low wines or spirits extracted from different charges of the same still; on pain of forfeiting 200*l*.

53 G. 3. c. 147. Keeping of low wines or spirits of different stills or charges.

Penalty 200*l*.

§ 2. Every such distiller shall provide a proper spirit cask sufficient to contain the whole quantity of spirits extracted from the low wines produced from each charge of his wash-still, and shall run and convey into such spirit-cask immediately from the low wine stills all such spirits so extracted; and so soon as the whole quantity of spirits extracted from the low wines produced from each charge of such wash stills, shall be collected in such cask, the officer of excise shall take a gauge, and try the strength of such spirits, and compute the same at the strength of one to ten over hydrometer proof, (but see now stat. 58 *G*. 3. *c*. 28. § 4. *post*, 283.) and such officer shall take such gauge and try the strength immediately on being required by the distiller so to do; and every such distiller shall continue in such cask all the spirits so extracted, until the surveyor, supervisor, or officer of excise shall have gauged and ascertained the strength thereof; and no such distiller shall have, in any cask by him used for a spirit cask, any spirits extracted from low wines produced from different wash stills, unless such wash stills shall have been charged with wash at the same time, and worked off at the same time, nor any spirits extracted from different low wine stills, unless such stills shall have been charged at the same time, and worked off at the same time with low wines produced from wash of the same charge of the wash-stills; on pain of forfeiting for every offence, in each of such cases, 200*l*.: Provided, that no distiller shall be subject to any penalty for not keeping in such cask all such spirits or feints extracted from any charge of any still, until the surveyor, supervisor, or officer shall have gauged and tried the strength thereof, if he shall have given to the officer under whose survey he shall be, notice in writing two hours of the time when such spirits or feints are to be removed from such cask, and if the proper surveyor, &c. shall not at the time specified in such notice, or within one hour after, attend to gauge and ascertain the strength of such spirits, &c.

Casks to be provided for the spirits produced from each charge of wash still.

Strength of spirits to be tried.

Regulations for keeping spirit cask.

Penalty 200*l*.

Proviso.

§ 3. Every such distiller shall provide a proper feint cask sufficient to contain the whole quantity of feints produced from each charge of his low wine stills, and shall run the feints produced from each charge, directly from such stills into the feint cask, and so soon as the whole quantity shall be collected in such feint cask from such charge, the officer shall take a gauge and try the strength of such feints, and compute the same at the strength of one to ten over hydrometer proof, and keep an exact account thereof; and every distiller shall continue in such feint cask all the feints produced from each charge of his low wine stills, until the surveyor, &c. shall have gauged and ascertained the strength thereof, and shall distil such feints with the waste of the next charge, or next charge but one; on pain of forfeiting on neglect, in each of such cases, the sum of 200*l*.

Cask to be provided to contain the whole quantity of feints produced from each charge.

Strength of feints to be tried.

Penalty 200*l*.

53 G.3. c.147.

Pumps for emptying the spirit and feint cask to be secured.

§ 4. Every such distiller shall permit the officers of excise to secure the pump for emptying the spirit and feint casks, so as to prevent such pump from being used in the absence of the officer, and also to secure the lid or head of the low wine spirit and feint casks.

Penalty on obstructing officers, 200*l*.

§ 5. If any such distiller, or any servant of his, &c. shall obstruct any officer of excise in the due execution of this act, he shall forfeit 200*l*.

23 G.3. c.70. Directions relative to officers' attendance for opening furnace door of stills, &c.

By stat. 23 *G*.3. *c*.70. § 20. Whenever the officer shall have received notice for opening the furnace door of any still belonging to any rectifier or compounder, and shall attend for that purpose, such officer shall not on any pretence open the furnace door of any such still, but of such as are at that time fully charged, nor until he hath examined the contents of such still, and hath seen the head put on and ready to be locked down; nor shall such officer, when attending on any such notice at the still-house of any such rectifier or compounder, be obliged to continue there more than one hour at a time; and if such rectifier or compounder shall not within that time have charged the still or stills mentioned in that notice, and put on the head of the still, so as they be ready to be locked down, he shall be obliged to give another notice before the officer shall be obliged to attend again to open the furnace door. See *ante*, p. 278.

57 G.3. c.123. Discharge-plugs, &c. of wash-back, when charged, shall be locked and sealed, and opened by the proper officer, to run the wash into the jack-back, &c.

Penalty on concealment of wash, &c. 500*l*.

By stat. 57 *G*.3. *c*.123. § 10. The discharge plugs, pipes, and cocks of every wash-back, used by any distiller of spirits in *England*, when charged with wort or wash, shall be locked and sealed, and opened by the officer of excise, for enabling such distiller to run the wash from any such back, of which notice shall be given, into the jack-back in order to charge the wash-still, in the same manner as the wash-pump and charging-cock of the wash-still used by any such distiller are required to be locked, sealed, and opened; and the wash main-pipe communicating between the fermenting-backs and the jack-back shall be so placed or fixed, that all wash or liquor entering therein shall run into the jack-back, and neither rest in such main-pipe, or run elsewhere, and shall have no pipe or other conveyance entering into or passing out of the same, except the plug-hole or pipe from each fermenting-back hereby directed to be locked, and the sewer-cock or pipe to be kept locked by the officer, and opened only for cleansing such wash main-pipe, and shall have no other cock thereon; and if any such distiller shall not provide, fix, and keep such wash main-pipe as aforesaid, or shall wilfully open or damage any such locks, fastenings, plugs, pipes, or cocks, or use any contrivance whereby wash may be conveyed away or concealed from the officer, or offend in any of the matters aforesaid, he shall forfeit 500*l*.

26 G.3. c.73. Removing or concealing wash, &c.

By stat. 26 *G*.3. *c*.73. § 20.] No wort, wash, tilts, or low wines in the possession of any distiller shall be removed from his entered distillery, nor concealed in any place whatever, on pain of forfeiture; and such distiller, and the person employed to remove, or who shall receive the same, shall severally forfeit 10*s*. for every gallon thereof, over and above such forfeiture.

57 G.3. c.123.

By stat. 57 *G*.3. *c*.123. § 8. If any wash used or made by any distiller of spirits in *England*, shall be concealed from the officer, the distiller shall forfeit 500*l*.

By stat. 59 *G.3. c.*53. § 24. If any entered or licensed distiller in *G. B.* shall conceal, remove, or carry away, or cause or suffer to be concealed, removed, or carried away, any wash brewed or made for extracting spirits, or any spirits extracted in *G. B.* for which the duty has not been charged, or which shall not have been taken account of by the proper officer of excise, every such distiller shall for every such offence forfeit 500*l.*, or 20*s.* for every gallon of such wash or spirits so concealed, removed, or carried away, at the election of the attorney-general, or the person who shall prosecute for the same: and the licence of every such distiller who shall be twice convicted of the offence aforesaid, shall, upon such second conviction, be deemed void, and such distiller shall not be entitled to any further or renewed licence as a distiller for the period of three years from the date of such second conviction. 59 G.3. c.53. Distillers removing wash or spirits, on which the duty has not been paid, shall forfeit 500*l.* or 20*s.* for every gallon removed.

By stat. 42 *G.3. c.*93. § 11. The officer of excise may from time to time gauge and take account of all wash, &c. prepared or preparing for the extracting of low wines and spirits in *England*, and if he shall find any deficiency in the quantity of such wash, &c. which had been before found or gauged, such officer shall charge him with the duty on a quantity of fermented wort or wash, &c. of the same kind of materials as the said wort, &c. consisted of, or was preparing or prepared from, equal to the quantity deficient; and the distiller shall pay the same. 42 G.3. c.93.

By stat. 26 *G.3. c.*73. § 16. No wort, wash, or tilts, or other liquor for the distilling of low wines or spirits for home consumption, shall be put into the still, or removed from the back or vessel wherein it was fermented, until the same shall have been gauged; on the penalty of 200*l.* for every such offence, and double duty. 26 G.3. c.73.

§ 25, 26. The officer shall keep an account of all wash, &c. whereon the new duties are imposed, and shall for every 100 gallons of wort or wash brewed from malt, corn, grain, or tilts, or mixture therewith, give the distiller credit for 20 gallons of spirits of the strength of one to ten over hydrometer proof; for every 100 gallons of cyder, perry, wash, or other liquor made or brewed from any other kind of *British* materials, 15 gallons; for every 100 gallons of wort or wash from melasses or sugar, 22 gallons; if from foreign refused wine, or foreign cyder, or wash prepared from foreign materials, except melasses and sugar, 20 gallons of the strength aforesaid. And (§ 26.) if such officer, on casting up the stock of any such distiller or maker, (except he be also a rectifier) at the strength aforesaid, shall find the quantity of spirits contained in the stock to exceed the quantity for which he is entitled to credit, (making proper allowances for spirits for which permits have been granted), every such excess shall be taken to have been occasioned by wort, wash, tilts, or other liquor not duly charged; and such excess shall be forfeited, and may be seized by any officer; and the person in whose stock such excess shall be found, shall forfeit 50*l.* Officers to keep an account and give credit, &c.

By stat. 57 *G.3. c.*123. § 1. If any distiller of spirits in *England* shall, in the year ending on the 5th of *July* in every year, make or produce from wort or wash made from malt, corn, grain, or tilts, or any mixture with the same, any quantity of spirits exceeding, upon the average of his work in such year, the proportion of 19 gallons of spirits at the strength of 8 *per centum* over hydrometer proof for every 100 gallons of such wort or wash so distilled, he 57 G.3. c.123.

57 G.3. c.123. shall, in lieu of any penalty for the excess, pay duty for all spirits exceeding the proportion upon such average, after the rate of 9*s*. 2½*d*. for every gallon of such excess, over and above all other duties on wort or wash.

§ 6. In lieu of the credit for spirits in proportion to the quantity of wort or wash made, to which distillers in *England* are now entitled, every such distiller shall be entitled to credit for the whole quantity of spirits, computed at the strength of 8 *per centum* over hydrometer proof, which he shall make or produce, and which shall be taken account of by the officer, in the spirit cask provided for the reception of spirits extracted from the low wines produced from each charge of his wash-still; and if any such distiller shall make or produce, or there shall be found in his stock or possession, any excess above such credit, computed as aforesaid, added to the quantity of raw spirits legally received into stock by permit, such excess shall be deemed spirits unlawfully made, and a quantity equal thereto may be seized by the officer out of any part of the stock; and the distiller shall, for every gallon of such excess, forfeit 20*l*.

§ 11. Is repealed by stat. 1 *G*.4. *c*.76.

26 G.3. c.73. Officers may take samples of wort.

By stat. 26 *G*.3. *c*.73. § 18. Officers may take samples of wort, &c. before conveyed into the wash-still, not exceeding 12 gallons at any one time from each cooler, wash-back, or other vessel paying 1*s*. 6*d*. a gallon for the same.

Manner of charging and working off wash-stills.

§ 21. Every distiller and maker for home consumption shall, before he begins to draw off any low wines from the wash-still, charge the same with wort or wash made from malt or corn, or melasses, or sugar, or with cyder, perry, or other liquor on which the duties have been charged in the proportion of not less than three parts in four of the whole quantity such still, including the head, is capable of containing; and every distiller, &c. for exportation, before he shall begin to draw off any low wines for exportation from such wash-still, shall charge the same with such wort or wash in the proportion of not less than four parts in five. And the same shall be worked off within 24 hours from the time of taking the account of the charge of such still, on pain of 200*l*.

§ 22. All low wines shall, within 12 hours after run off from the wash-still, be conveyed into the low wine still; and shall within the next twelve hours be drawn off and distilled into spirits, on the penalty of 10*l*. an hour.

Officer to take stock every three months of distillers and rectifiers.

§ 27. The officer shall every three months, if required, take an account of the stock of all distillers and rectifiers; and if any unfair increase shall be found, the same shall be forfeited, and may be seized; and the person in whose stock such excess shall be found shall forfeit 50*l*. [§ 28, 29, 30. are repealed 28 *G*.3. *c*.46. § 72.]

Rectifiers to mark the quantity and strength of spirits.

§ 33. Every rectifier shall mark the quantity and strength of mixed spirits on the outside of the cask, upon 12 hours' notice given him by the officer, and in default thereof, or if untruly marked, the same shall be forfeited, and also the casks, and may be seized, and such rectifier shall also forfeit 50*l*.

Strength of spirits.

§ 31. No distiller or maker shall sell or send out any spirits for home consumption of a greater strength than one to ten over hydrometer proof; and no rectifier or compounder (whether a maker or not) shall sell or send out any *British* brandy, *British* rectified spirits, *British* compound, or other *British* spirits, of a

greater strength than one in eight under hydrometer proof; and no distiller, maker, rectifier, or compounder, or dealer in spirits, shall sell or send out any *foreign spirits*, or have in his possession any foreign spirits, or foreign and *British* spirits mixed together, except shrub, cherry, or raspberry brandy, of a lower degree of strength than one in six under hydrometer proof, on pain of forfeiting the same, together with the casks, which may be seized by any officer. 26 G.3. c.73.

58 G.3. c.28. Spirits deemed to be of the strength denoted by Sikes's hydrometer, except of the description herein mentioned.

By stat. 58 *G*.3. *c*.28. § 1. The 56 *G*.3. *c*.140. establishing the use of *Sikes*'s *Hydrometer* (instead of *Clarke*'s) in ascertaining the strength of spirits, is repealed; and by § 2. it is enacted that throughout *G. B.* and *Ireland*, all spirits shall be deemed and taken to be of the degree of strength at which *Sikes*'s hydrometer, used under the directions of the commissioners of excise, shall, upon trial by any officer of excise, denote such spirits to be, except any spirits (not being foreign cordials, *British* brandy, or *British* compounds) which shall be sweetened, or have any ingredient mixed with or put into the same, so as to defeat the operation of the said hydrometer, or deceive the officer in trying the true strength thereof: in every of which cases, such spirits shall be forfeited, and may be seized by any officer of excise; and all rules, regulations, provisions, penalties, forfeitures, clauses, matters, and things in any act not hereby controuled or altered, for ascertaining the strength of spirits, for any purpose whatever relating to the customs and excise, by *Clarke*'s hydrometer, or by any other hydrometer in *Ireland*, shall be applied in all respects to *Sikes*'s hydrometer.

Spirits sweetened to defeat the operation of the hydrometer, forfeited.

Regulations for trying the strength of spirits by Clarke's hydrometer shall apply to Sikes's.

§ 3. Whereas the strengths of spirits denoted by *Sikes*'s hydrometer, according to the temperature thereof, have been, under the direction of the commissioners of excise, for *England*, set down in a table intituled, " A table of the strengths of spirits denoted by *Sikes*'s hydrometer," and which said table has been and is subscribed by the chancellor of the exchequer, and lodged with the commissioners of excise for *England*; it is enacted, that the strengths of spirits set down in the said table shall be deemed true and just, and the said table shall, on all necessary occasions, be used by every officer of customs and excise, in the U. K., for the purposes in that behalf, and the results of such use shall be deemed and taken to be accurate and just.

Table of the strengths of spirits formed under the commissioners of excise, to be used by the officers of customs and excise.

§ 4. In all trials of the strength of any spirits by any officer of customs or excise, with *Sikes*'s hydrometer, the strength of twenty-one *per centum* above proof denoted thereby shall be substituted for the strength of one to four over hydrometer proof mentioned in any act relating to the customs or excise; and in all such trials the strength of nine *per centum* above proof by *Sikes*'s hydrometer shall be substituted for the strength of one to nine over hydrometer proof mentioned in such acts: and in all such trials, the strength of seven *per centum* above proof by *Sikes*'s hydrometer shall be substituted for the strength of one to ten over hydrometer proof mentioned in such acts; and in all such trials the strength of thirteen *per centum* under proof by *Sikes*'s hydrometer, shall be substituted for the strength of one in eight under hydrometer proof mentioned in such acts; and in all such trials the strength of fifteen *per centum* under proof by *Sikes*'s hydrometer, shall be substituted for the strength of one to six

Certain rates of strength by Sikes's hydrometer shall be substituted in room of others herein-mentioned.

58 G.3. c.28. under hydrometer proof mentioned in such acts; and in all such trials, the strength of seventeen *per centum* under proof by *Sikes*'s hydrometer shall be substituted for the strength of one in six under hydrometer proof mentioned in such acts; and in all such trials, the strength of twenty-two *per centum* under proof by *Sikes*'s hydrometer shall be substituted for the strength of one in five under hydrometer proof mentioned in such acts; and in all accounts to be taken, by any officer of excise, of the stock of *British* brandy, rectified *British* spirits, raw *British* spirits, compounds, or other *British* spirits of rectifiers, or compounders of spirits, such stocks shall be computed at the strength of twenty-eight and two-thirds *per centum* under proof by *Sikes*'s hydrometer, instead of one in three and three-fourths under hydrometer proof mentioned in such acts; and all *British* spirits of greater strength than forty-two *per centum* above proof by *Sikes*'s hydrometer, shall be deemed to be spirits of wine within the meaning of such acts; and all penalties, forfeitures, powers, regulations, &c. in such acts relating to any spirits of the aforesaid strengths by *Clarke*'s hydrometer, shall be in force and applied with respect to spirits of the aforesaid strengths by *Sikes*'s hydrometer so substituted for them: Provided, that if the strength of any spirits manufactured and imported from *Scotland* into *England*, shall, upon trial by any officer of excise by *Sikes*'s hydrometer, be denoted to be greater than that of seven *per centum* above proof, and the strength thereof shall not exceed ten *per centum* above proof, such spirits shall not be forfeited, but be charged with a further duty proportioned to their surplus strength.

Regulations relating to Clarke's hydrometer shall be applicable to Sikes's.

Scotch spirits imported into England having an excess of strength, to be charged with a proportionate duty.

26 G.3. c.73. Spirits in the custody of a dealer not a rectifier.

By stat. 26 *G.3. c.*73. § 34. All *British* spirits, or any mixture of *British* with foreign spirits, which shall be found in the custody of any dealer, not being a rectifier or compounder of *British* spirits (except raw spirits or spirits of wine received by permit) if stronger than one in eight under hydrometer proof, shall be forfeited, and also the casks, and may be seized by any officer of excise.

Officers may take samples of spirits.

§ 36. In order the better to examine the strength and quality of such spirits, any officer may take samples thereof, not exceeding four gallons respectively, paying after the rate of 7*s.* a gallon for *British* spirits, and 13*s.* a gallon for foreign spirits; and if any person shall obstruct such officer, he shall forfeit 100*l.*

Casks to be marked and gauged.

§ 38. All fixed casks used for keeping such *British* spirits shall be entered at the proper office of excise, and gauged, on pain of 100*l.* and forfeiture thereof, and all liquor contained therein: and every moveable cask used for sending out or keeping such spirits shall have its full measure marked on some conspicuous part thereof, on pain of 50*l.* for every default.

To be filled up, that an account may be taken.

§ 39. Every distiller or rectifier shall, on 12 hours' notice in writing from the officer, fill up his moveable casks that are not then full, (except one cask of each sort of spirits which may remain on ullage,) within such 12 hours, that an account of his stock may be taken; and shall separate the different sorts of spirits, and keep the same separate for six hours next after, to enable such officer to take an account with greater certainty, on pain of 100*l.*

By stat. 26 *G.3. c.*76. § 1. 16. After the duties of excise are charged on wash made for extracting spirits, if any part of the wash is lost by accident (as by bursting of the vessel) the manufacturer cannot be relieved from the respective proportion of the duty as

for an overcharge. For the duty attaches as soon as the officer has gauged the wash, and ascertained the quantity, after which the commodity is at the entire risk of the distiller; and this is so well understood, that it is frequently the subject of insurance against accidental losses. The very point in question was decided in favour of the crown by the Court of Exchequer, in *Liptrapp's* case, *E.* 34 *G.*3.: and it is a point of great importance to the revenue to have it ascertained, that when once the duty has attached upon any commodity, the public have no concern with any subsequent loss or deterioration to which it may be subject in the hands of the manufacturer. It was the policy of the law to establish this rule, in order to prevent the numerous frauds which were formerly practised. *Rex* v. *Sikes, M.* 37 *G.*3. 7 *T. R.* 56. See 26 *G.* 3. *c.* 73. § 69. — 1 *W.* & *M. c.* 24. § 13. 26 G.3. c.73.

Denomination of spirits.

By stat. 26 *G.*3. *c.*73. § 44. All *British* spirits of the third extraction, or which have been twice distilled from low wines, and had flavour communicated thereto, shall be deemed *British* brandy; if no flavour has been communicated thereto, the same shall be deemed *rectified British spirits.* And if of the second extraction, or once distilled from low wines, the same shall be deemed *raw British spirits.* And all *British* spirits distilled with juniper berries, carraway seeds, anise seeds, or other seeds or ingredients used in the compounding of spirits, shall be deemed *British compounds.* And all *British* spirits of a greater strength than one to two over hydrometer proof shall be deemed *spirits of wine.*

30 G.3. c.37. Allowance for increase by water, &c.

By stat. 30 *G.*3. *c.*37. § 2. And for making unto rectifiers and compounders a fair allowance for that increase by water, sugar, syrup, or fruit, which is necessary to render their spirits fit for consumption, there shall be allowed permits for sending out any number of gallons not exceeding the rate of 150 gallons of *British* brandy, rectified *British* spirits, or compounds, for every 100 gallons of raw *British* spirits received from any distiller (not being a rectifier) of the strength of one to ten over hydrometer proof, or which they have made at that strength. (See stat. 58 *G.* 3. *c.* 23. § 4. p. 283.)

Account of stock of rectifiers and compounders to be taken every three months.

§ 3. The officers shall take an account of the stock of rectifiers and compounders every three months at least; and if any increase in quantity shall be found, unless received by permit, at the strength aforesaid, with the allowance of 50 gallons on every 100 gallons so made or received, computed at the strength of one in 3¾ under hydrometer proof, a quantity equal to the quantity so found in excess shall be forfeited, and may be seized; and such person shall also forfeit 50*l.*

Strength of spirits to be sent out.

§ 6. If any rectifier or compounder shall sell or send out any *British* spirits or compounds of a greater strength than one in five under hydrometer proof, the same shall be forfeited, and treble the value thereof, or 50*l.* in the whole, at the option of the person who shall sue; and the same may be seized, together with the casks and vessels containing the same.

4 Ann. c.12. Officer to charge for materials missing.

By stat. 4 *Ann. c.*12. § 4. The officer may keep an account of the several sorts of wash which shall be found by him in the hands of a distiller, and upon any decrease of such wash brewed or made from malted corn, or corn unmalted, may charge such distiller with so much low wines or spirits of the first extraction as one-

4 Ann. c.12. fourth part of the same wash so decreased shall amount unto, and also with so much proof-spirits or spirits of the second extraction, as three-fifth parts of the said low wines so charged shall amount unto; and also upon any decrease of wash made from cyder or perry may charge such distiller, upon whom such decrease shall be found, with so much low wines or spirits of the first extraction as one-fifth part of the same wash so decreased shall amount unto; and likewise with so much proof spirits, or spirits of the second extraction, as one-half part of the same low wines or spirits of the second extraction shall amount unto.

42 G.3. c.93. If officer, after taking account of wash, &c. finds any deficiency, he shall charge the distiller with duty, or wash equal to deficiency.

By stat. 42 *G*.3. *c*.93. § 11. It shall be lawful for the officers of excise to gauge and take account of all wash, and other liquor or materials, prepared or preparing for extracting of low wines or spirits in *England*; and if any officer shall find any deficiency in the gauge, he shall charge the distiller with the duty on a quantity of fermented wort, wash, cyder, perry, or other wash or liquor of the same kind of materials as the said wash, liquor, or other materials consisted of, or was prepared from, equal to the quantity so deficient, and the distiller shall pay the same accordingly.

Duty on spent wash re-distilled.

By stat. 49 *G*.3. *c*.24. All spent wash re-distilled shall be charged with the duty under regulations of existing laws.

23 G.3. c.70. When the still has done working, the head shall be taken off

By stat. 23 *G*.3. *c*.70. § 19. Every rectifier and compounder shall take off the head of each still, as soon as the same shall have done working; the same shall not be put on, until the still shall be again charged and ready to work; nor until the officer shall have examined the quality of the spirits then in the still; on pain of forfeiting 100*l*.

19 G.3. c.50. Entry and payment of the duties.

By stat. 19 *G*.3. *c*.50. § 4. Every person who shall distil low wines or spirits shall every week make a true entry in writing at the next office of excise within the limits of which the same are distilled, of all the wash by him used for the making low wines and spirits, within such week, on pain of forfeiting 10*l*.

§ 5. Every distiller who shall not pay within a week after he shall have made, or ought to have made his entry as aforesaid, shall pay double the value of the duty.

7 & 8 W. c.30. Carrying out of the still-house.

By stat. 7 & 8 *W*. *c*.30. § 15. No distiller shall deliver or carry out any low wines, spirits, or aqua vitæ, to any of their customers in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from *September* 29. to *March* 25. yearly, between five in the morning and eight in the evening, and from *March* 25. to *September* 29. yearly, between three in the morning, and nine in the evening, on pain of 10*l*.

26 G.3. c.73. Permit for removal.

By stat. 26 *G*.3. *c*.73. § 41, 42. All permits for removing *British* spirits, for home consumption, shall correspond with the request notes, and shall be delivered with such spirits to the buyer, on forfeiture of the same to such buyer, and double the price thereof agreed for including the duties; and such buyer may be admitted to prove that such spirits were delivered without a lawful permit: but if it shall appear at the hearing that the seller took out a permit to remove such spirits to such buyer, and had a suitable decrease, the same shall be adjudged to have been sent out and delivered with a lawful permit:—Provided (§ 43.) that no buyer shall avail himself of such forfeiture, unless complaint is made within 14 days after the delivery of the spirits.

§ 57. No person shall send out any *British* spirits mixed with foreign spirits, above the quantity of four gallons, on pain of forfeiting 50*l*. 26 G.3. c.73. Mixed spirits above 4 galls. not to be sent out.

§ 45. If any distiller, maker, rectifier, compounder, or retailer of spirits, shall be convicted before the commissioners, or one justice, of fraudulently making or having in his possession any spirits, either *British* or foreign, without having received a legal permit with the same, and that such offence was knowingly and wilfully committed, which must be set forth in the conviction; every such offender (over and besides all other penalties) shall forfeit his licence, and the same shall be void, and no new licence shall be granted to him for one month. Fraudulently making or receiving spirits without a permit.

By stat. 26 *G.3. c.*77. § 10, 11. If any person shall knowingly receive, buy, or have in his possession, any *British* spirits after the same have been removed from the place where made, and where they ought to have been charged with the duty, before the said duty hath been charged, (except such as have been condemned as forfeited,) whether he claim any property or interest therein or not, shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sort shall then bear in *London*. 26 G.3. c.77. Persons having British spirits in their possession which have not been charged with the duty.

By stat. 26 *G.3. c.*73. § 46. No maker or rectifier shall receive into his custody any raw *British* spirits in any cask less than 100 gallons; and no distiller or rectifier, or dealer in spirits, shall receive any *British* brandy, compounds, raw spirits, or spirits of wine, but between five in the morning and seven in the evening, from 25th *March* to 29th *September* inclusive; and between seven in the morning and six in the evening from 30th *September* to 25th *March* inclusive; on forfeiture thereof, and also the casks, which may be seized, and also 50*l*. 26 G.3. c.73. Times in which spirits are to be received, and size of the casks.

By stat. 57 *G.3. c.*123. § 12. No distiller or rectifier in *England*, receiving any spirits, not being foreign spirits, into his custody, shall break bulk or draw off any part thereof, or add water or any thing thereto, or alter the same, or open any cask, or alter any package containing such spirits, or the spirits therein removed, until the officer of excise shall have taken an account of the strength and quantity thereof; and every such distiller and rectifier shall, on the receipt of such spirits, give notice thereof to his surveying officer, and deliver to him the permit received with such spirits, whereupon the officer shall attend and take account of the strength and quantity; and if any distiller or rectifier shall fail to give such notice, or deliver such permit, or otherwise act contrary to these regulations, unless the officer shall not attend within three hours after receiving the notice, such spirits, or a quantity equal thereto, shall be forfeited, and may be seized by any officer of excise, and the distiller or rectifier offending shall forfeit 500*l*. 57 G.3. c.123. No distiller, &c. receiving spirits not being foreign, to break bulk, &c. till account of strength, &c. taken. Notice to officer of receipt of spirits.

(*c*) Spirits made in England for Exportation, or shipped as Stores, or carried Coastwise.

By stat. 2 *G.3. c.5.* § 15 * Every distiller intending to make or distil spirits for exportation shall, four days at the least before he shall begin to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in 2 G.3. c.5. Entry of houses and vessels for making spirits for exportation.

* See *Ruffhead* and *Raithby*'s Editions of the Statutes.

2 G.3. c.5. order to extract spirits for exportation, make a particular entry at the next office of excise, of every still, copper, ton, wash-batch, cask, or other vessel, which he shall make use of for the brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, or spirits; and also of the casks or vessels which he shall make use of for the brewing, holding, or keeping of the after-running or feints from the second extraction which shall from time to time be drawn from every such still; and also of every workhouse, stillhouse, storehouse, warehouse, or other place, by him used for the preparing, distilling, or keeping wash, low wines, or spirits; and in such entry shall insert the day when he intends to begin first to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation; and shall afterwards from time to time, during the continuance of such entry, give or leave notice in writing at the said office of excise, or with the officer for the division, four hours at least before he shall begin any such subsequent brewing or mixing, and shall insert in such notice the hour when he intends to begin; and shall also from time to time, during the continuance of such entry, give or leave notice in writing at the said office of excise or with the said officer, four hours at least before any wash is pumped up or otherwise conveyed into the still, and shall insert in such notice the hour when he intends to begin; on pain of 100*l.* for every offence. And if after such entry so made, he shall not begin and proceed to brew or mix his materials as aforesaid, on the day mentioned in such entry, or within four hours afterwards; or having given such notice, shall not begin and proceed in such operations at the hour and time mentioned in such notice, or in two hours afterwards, such notice shall be void; and if he shall proceed without fresh entry or notice respectively, he shall forfeit the like sum of 100*l.*

§ 16. Provided that nothing herein shall extend to permit or authorise any distiller to give notice or make entry of his intention to make spirits for exportation, whose wash-still will not contain 1600 gallons, and the spirit or low wine-still 800 gallons. Neither shall any distiller be permitted to distil spirits for exportation, although he may have made entry as aforesaid, unless he shall actually have distilled into spirits all the wash and low wines in his custody for making of spirits for home consumption, at least 48 hours before the day mentioned in such entry.

Entry for exportation may be withdrawn, and an entry made for home consumption.

§ 17. Provided, that when any distiller shall be desirous of distilling any spirits for home consumption, and shall have actually distilled into spirits all the wash, low wines, and feints in his possession for the making of spirits for exportation, and such spirits shall be locked up in the warehouse as hereinafter is directed; he may withdraw his entry for exportation, and be at liberty to make a fresh and like entry for making spirits for home consumption; and after six days from such entry made, he may begin to brew or mix materials for wash to be distilled into spirits for home consumption: and if he shall begin contrary hereunto, he shall forfeit 200*l.*

Manner of making and warehousing for exportation.

§ 18. No wash brewed or mixed for extracting spirits for exportation shall be pumped into the still, or otherwise removed from the back or vessel wherein the same was fermented, but in the presence of an officer; and such distiller shall draw off his

low wines immediately from the still into entered vessels, and continue them therein, so that the officers may take a true gauge of them; and such distiller shall provide a proper cask, which shall be duly entered and gauged, into which the spirits shall immediately run from the still, which cask shall be sufficient to contain the whole produce of spirits to be extracted from each still when made up to the proper strength; and when the whole quantity of spirits shall be collected therein from each still, the same shall immediately be made up in the presence of the officer, to the strength of one to six under hydrometer proof; and a true gauge of such spirits so made up shall then be taken by the officer. And the said spirits shall immediately afterwards be put into casks, and secured in the presence of the officer in a warehouse provided by the distiller, and duly entered at the proper office of excise, wherein no spirits for home consumption shall be put; and such warehouse shall be secured to the satisfaction of the surveyor or supervisor signified under his hand; and shall be secured under three locks, one of which to be provided, and the key of it kept by the distiller, and the other two by the surveyor, supervisor, or officer, at the expence of the distiller; one of the keys to be kept by the surveyor or supervisor, and the other by the officer, until the spirits be delivered out for rectification or exportation. And if any distiller for exportation shall act contrary to these directions, or shall obstruct the officer in gauging, or in taking samples, or in trying the proof of the spirits (which gauges, samples, and trials of proof the officers shall make as often as the commissioners shall direct; the samples to be returned when the commissioners shall find it expedient to give directions for that purpose), or shall open any of the locks or doors in the absence of the officer, or make any way into such warehouse, or remove any part of the partition between the warehouse for exportation and any adjoining place, or make any addition to or any way alter the same, without notice to the supervisor, and his consent in writing first had; or shall remove any of the said spirits from the locked warehouse to any other warehouse for exportation, before the same shall be taken out for immediate rectification or exportation; or shall remove or conceal, or suffer to be removed or concealed, any wash or low wines for making spirits for exportation, or any such spirits, whether raw or rectified, either before the same are put into the warehouse or afterwards; he shall in every such case forfeit 500*l*. 2 G. 3. c. 5.

§ 19. But this shall not hinder any maker of spirits for exportation from sending such spirits out of his locked warehouse to any other distiller; provided such maker and distiller give bond in double value of the spirits, and double duty which they would have been liable to if made for home consumption, for the due exportation thereof, within three months; and provided leave in writing be obtained from the commissioners; and four hours' notice thereof at least be given to the officer, that he may receive the same into such distiller's stock; and provided such spirits be removed with a proper certificate from an excise officer: and such distiller shall thereafter be liable to the same penalties for breach of directions, as the maker would have been.

Spirits may be sent by maker for exportation to other distiller, on bond being first given.

§ 26. To prevent distillers from working in the absence of the officers, every such distiller shall permit the officer to secure the heads of the stills, when the stills are not at work, and also the

Distillers not to work in absence of officers.

2 G.3. c.5.

pumps for charging the stills and emptying the low wine and spirit cask, so as to prevent the same from being used in the absence of the officer; and also to secure the lid or head of the low wine and spirit casks, and the safe at the end of the worm, to prevent any spirits or low wines from being secreted whilst the still is at work.

No raw spirits exported.

Taking out of the warehouse for rectifying, or exportation.

§ 20. No raw unrectified spirits shall be permitted to be exported. And when any distiller for exportation shall be desirous to take any of his spirits out of the warehouse in order to be rectified, or when rectified and again deposited in the warehouse, in order to be immediately shipped for exportation, he shall thereof give four hours' notice in writing to the supervisor or officer of excise, and shall insert in such notice the day and hour when he intends so to do, and also the quantity and quality of spirits he desires to take out, and whether such spirits are raw or rectified, and out of what warehouse, and whether the same are for rectification, and by whom, or for immediate exportation, or to be sent coastways, and to whom and to what port, and whether for merchandize or stores. And the supervisor or officer shall attend and see the quantity taken out, and take an account of the same. And if such distiller shall not begin and proceed to take the spirits out of the warehouse at the time mentioned in the notice, or within two hours after, such notice shall be void; and he shall give a fresh notice four hours at least before he shall begin to take the said spirits out of the warehouse. And if he shall make default in any of the said particulars, he shall forfeit 100*l.*

§ 21. When any raw spirits shall be so taken out in pursuance of such notice, the same shall be immediately pumped up, or put, in the presence of the officer, into the still or stills, and be rectified forthwith, and the spirits shall be run off immediately from the still into a like cask, as is before directed to be provided and entered for the containing of spirits immediately distilled from low wines: and when the whole quantity of spirits designed to be made into brandy shall be collected into such cask from each still, the same shall be immediately made up in the presence of the officer to the strength of one to six under hydrometer proof, at which strength all spirits are to be exported; and a gauge of such spirits so made up shall then be taken by the officer, who shall keep an account thereof; and such spirits shall immediately afterwards be put into casks, and, in the presence of the officer, either carried directly on shipboard for exportation (if intended to be immediately exported), or else into such warehouse to be locked up in manner aforesaid.

§ 22. If it shall happen that the spirits distilled for exportation in one day belonging to any distiller, cannot for want of time be conveyed from the spirit cask (into which they are directed to be run immediately from the still) and locked up in the warehouse, the officer shall gauge the same, and secure the lid of the said spirit cask, and take samples thereof; which spirits shall be locked up in the warehouse the next morning (if not intended for immediate exportation). And if it shall appear that any decrease has been made in the quantity or quality of the said spirits so gauged; or if any such spirits shall have been removed in the absence of the officer; the distiller shall be charged for the said spirits so

decreased or removed, double the duties which they would have been charged with if made for home consumption.

42 G.3. c.93.

By stat. 42 *G.*3. *c.*93. § 9. In case the spirits distilled for exportation in one day, cannot for want of time be conveyed from the spirit cask, and locked up (as by stat. 2 *G.*3. *c.*5. § 22. is directed), and any decrease (as therein mentioned) has been made in quantity or quality, or if they had been removed in the absence of the officer of excise, the distiller shall, in lieu of the charge therein directed to be made, be charged with double the duties which the wort, wash, liquor, or other preparation would have been chargeable with had they been home-made for home consumption, reckoning at the rate of 100 gallons of wort, &c. for every 24 gallons of spirits.

21 G.3. c.55. **Spirits made for exportation not to be taken out for home consumption.**

By several former acts, spirits made for exportation were permitted (under certain regulations) to be taken out of the warehouse for home consumption: but now, by stat. 21 *G.*3. *c.*55. § 33. no spirits *made for exportation* shall, in any case whatever, be delivered out of the warehouse for home consumption.

2 G.3. c.5. **To be returned to the warehouse after rectifying.**

By stat. 2 *G.*3. *c.*5. § 25. When any quantity of raw spirits shall in pursuance of any notice, be delivered out of the warehouse, in order to rectify the same, as many gallons of rectified spirits, and of the same strength when made up, shall be produced as such quantity amounted to when taken out of the warehouse; allowing only for the feints. And the commissioners shall make just allowances for necessary waste, and the difference that will arise between gauging and weighing spirits. Which feints shall also be run off from the still directly into one large feint cask, and shall be immediately gauged as soon as the still is off, and an account thereof taken by the officer, and kept in stock by him; who may take samples of such feints. Which feints shall be in like manner locked up in the warehouse, and shall be there put into one or more large casks to be provided by the distiller, and marked with the word *feints*. And every such distiller shall, once a month at least, distil all his feints, and make up the spirits to be produced therefrom of the strength of one to six under hydrometer proof. And all such spirits shall then be locked up, or exported as other spirits for exportation are hereby directed to be.

21 G.3. c.55.

By stat. 21 *G.*3. *c.*55. § 32. The distiller shall be allowed after the rate of six gallons for every ton, in full compensation for all waste, loss, or damage (except in case of unavoidable accidents); and all decrease above that proportion shall be charged with double the duty which the spirits would have been charged with, if they had been made for home consumption.

2 G.3. c.5. **Penalty for wash or spirits missing.**

By stat. 2 *G.*3. *c.*5. § 26. If any decrease shall be found in the *wash* brewed or made for the distilling of spirits for exportation, (except such decrease as shall be made appear to the commissioners to have really and truly arisen from accidents,) the officer shall charge double duty for the same, calculating such wash so found to be decreased, to produce the same quantity of low wines and spirits as wash is presumed to do when spirits are made for home consumption: And if any decrease shall appear in the stock of *spirits* made for exportation, except such as may be accounted for by certificate of the officer either as being exported for merchandize or for stores, or as being taken out for home con-

2 G.3. c.5. sumption on payment of duties by consent of the commissioners, or by any allowance the commissioners shall have made for waste or for any difference which may have arisen between gauge and weight, or by being sent coastways for exportation, or by being sent with the consent of the commissioners to any other distiller in order to be rectified for exportation; the officer shall charge for all the spirits so decreased double the duty such spirits would have been charged with if made for home consumption.

21 G.3. c.55. By stat. 21 *G.3. c.55.* § 31. For better enabling the officers to make true charges on the apparent decreases of wash discovered at the still-house of every distiller making spirits for exportation, every such distiller, who between *Oct.* 1 and *June* 1, yearly, shall distil spirits for exportation, shall for every six gallons of wash produce to the officer one gallon of spirits; and between *June* 1 and *Oct.* 1, for every seven gallons of wash one gallon of spirits; otherwise they shall be charged for all the wash missing, over and above the said six gallons and seven gallons, as for spirits made for home consumption.

28 G.3. c.46. By stat. 28 *G.3.* c.46. § 77. Every distiller who, between the 15th *Nov.* and 15th *May*, shall distil spirits for exportation to foreign parts, shall, for every nine gallons of wash found in his custody, produce to the officer at least two gallons of spirits; and between 15th *May* and 15th *Nov.* shall, for every six gallons of wash so found, produce one gallon of spirits, of the strength of one-sixth under hydrometer proof; and if the same shall fall short of such proportions, such person shall pay 1*s.* 6*d.* for every gallon of wash missing.

2 G.3. c.5. Bond to be given on exportation. By stat. 2 *G.3. c.5.* § 29. When any spirits made for exportation shall be entered for *Ireland*, or his majesty's plantations in *America*, or any other parts beyond the seas in *Europe*, or any parts in *Africa* or *Asia*; the exporter thereof, when the whole quantity of spirits intended at that time to be exported shall be shipped, shall immediately give bond in double value of the spirits entered for exportation, and double the duties such spirits ought to have paid if they had been made for home consumption, that the same shall (the danger of the seas and enemies excepted) be landed at the place of destination; and until such bond shall be entered into by the exporter, the distiller from whose warehouse such spirits were sent shall be charged for such quantity of spirits so shipped for exportation with double the duty such spirits would have been charged with if made for home consumption, and such charge shall not be discharged till such bond shall be given; and such bond shall not be discharged till a certificate be produced from the proper officer abroad of the due landing thereof, and of oath being made before him by the master or other person having charge of the vessel that the same had not been fraudulently diminished, relanded, or unshipped; and until oath shall also be made by the exporter at home, that to the best of his knowledge or belief the same were disposed of at the place referred to in the certificate; and the condition of the bond shall be, to produce such certificate from *Ireland* in six months, from *America* in 18 months, from other parts of *Europe* in 15 months, from *Africa* in 18 months, and from *Asia* in three years, dangers of the seas and enemies excepted.

By stat. 2 *G.3. c.5.* § 27. When spirits made for exportation shall be delivered out of the warehouse, to be sent *coastways* (with a certificate from the proper officer) in order for exportation, the distiller shall, on taking out the same, give bond in double the value of the spirits; [and by stat. 42 *G.3. c.93.* § 10. double the duties which the wort, &c. would have been chargeable with had the said spirits been made from fermented wort or wash in *England*, for extract from malt, &c. for home consumption, reckoning 100 gallons of wort, &c. for 24 gallons of spirits,] that the same shall (the danger of the seas and enemies excepted) be truly landed in such por of this kingdom for which the same shall be entered. And such bond shall not be discharged or delivered up till a certificate shall be produced from the chief officer of excise of the port for which such spirits were entered, testifying the landing thereof, and describing the number of the casks or other package, and the marks, and the quantity of spirits landed; and also testifying that the master, mate, purser, or other person having charge of the vessel, had made oath before him that the said spirits were fairly landed there, and that at the time of landing they were of the same quality as when shipped on board, and that no part of such spirits had been wilfully or fraudulently diminished, relanded, or unshipped since they were put on board; and also testifying that the same were really since their arrival there exported from thence to foreign parts: and the condition of all such coast bonds shall be, to produce such certificate in six months from the date thereof. And such spirits so to be sent coastways, when landed at the port for which they were entered, shall be immediately put into a proper warehouse, and there continued until the same shall be exported, and shall be secured by the person to whom they are sent, and by the said chief officer, by two locks and keys to be provided by the person to whom the spirits were sent, one key to be kept by the said person, and the other by the officer. And all the masters, commanders, and other persons belonging to any vessel carrying goods coastways, who shall assist or connive at the fraudulent landing, embezzling, or diminishing any spirits sent coastways, and all other persons concerned in unshipping the same, or to whose hands the same shall knowingly come, shall be subject to all penalties and forfeitures inflicted by any former act for enforcing the fair exportation of spirits to foreign parts.

2 G.3. c.5. Bond for carrying coastways for exportation.

42 G.3. c.93.

2 G.3. c.5.

But now by stat. 42 *G.3. c.93.* § 7. Every maker of spirits for exportation sending any such spirits out of his locked-up warehouse to any other distiller, and the distiller who shall receive the same, shall, in lieu of the said bond, give bond with sufficient security in double the value of such spirits, and double the duties which the wort, wash, liquor, or other preparation from whence such spirits were made, would have been chargeable with, had they been made from fermented wort or wash brewed in *England*, for extracting such spirits for home consumption from malt, corn, grain, or tilts, reckoning at the rate of 100 gallons of such worts, &c. for every 24 gallons of such spirits, for the due exportation of such spirits, within three months next after the date of each respective bond, provided that such leave be first obtained, and such notice thereof given as by the said 2 *G.3. c.5.* § 19. is required.

42 G.3. c.93. What bond to be given, when maker for exportation sends spirits to other distiller.

42 G.3. c.93. By § 8. Stat. 2 *G*.3. *c*.5. § 26. is altered, and in case of decrease found in the wash, the distiller is to be charged in double duties on the wash instead of the spirits.

By § 10. The bond to be given by the distiller shall (instead of the amount in 2 *G*.3. *c*.5. § 27.) be in double the value of the spirits, and double the duties, which the worts, &c. would have been chargeable with if the spirits had been made in *England* for home consumption, reckoning 100 gallons of wort, &c. for 24 gallons of spirits.

3 G.1. c.4. Certificate for carrying coastwise. By stat. 3 *G*.1. *c*.4. § 17. All low wines or spirits carried *coastwise* without a certificate from the officers of excise where they were made that the duty hath been paid, shall be forfeited, and seized by the officers where they shall be brought in.

2 G.3. c.5. Exportation duty free. By stat. 2 *G*.3. *c*.5. § 13. No wash which shall be brewed or made for the making of low wines in order to extract spirits for *exportation*, nor any such low wines or spirits, shall be chargeable with any duties of excise, and all drawbacks thereupon, whether payable by the commissioners of excise or customs, shall cease.

43 G.3. c.69. Stat. 43 *G*.3. *c*.69. which consolidates the duties, &c. of excise, in addition to such allowances as are made by *Sched*. (C.), continues all other such special allowances, bounties, and drawbacks as are particularly directed to be made by any act or acts of parliament in force on or immediately before 5th *July* 1803, except so far as such allowances may be varied or repealed by the said act.

2 G.3. c.5. 27 G.3. c.13. Bounty on exportation. By stats. 2 *G*.3. *c*.5. § 28. — 27 *G*.3. *c*.13. (*Sch*. F.) For the encouragement of the exportation of spirits made from *corn*, there shall be a bounty of 3*l*. 12*s*. for every ton of spirits made from corn, which shall be exported as merchandize. And on oath made before two commissioners of excise, or justices of the peace for the place from which such spirits are intended to be exported, that the same were drawn and made in *G. B.* from corn under the regulations of this act, and not mixed with any other materials except what were necessary for rectifying the same, and that since the making thereof, the same have been properly secured in a warehouse according to the directions of this act, and that the same are to be exported for merchandize to be spent beyond the seas; and on producing a certificate under the hand of the officer of excise for the port or place where such spirits were shipped, of the quantities so shipped, and that the same were shipped in the presence of such officer; the distiller shall be paid by the commissioners of excise, or their collector for the port or place where such spirits shall be shipped, the said bounty of 3*l*. 12*s*. a ton, and so in proportion for a greater or less quantity.

Drawback on exportation. By the former acts it was generally provided that home spirits might be exported, and a drawback of the duties was to be allowed thereupon.

6 G.2. c.17. By stat. 6 *G*. 2. *c*. 17. § 7, 8. For spirits drawn from *British* corn, there was to be allowed a drawback by the excise officers at the port of shipping, of 4*l*. 18*s*. a ton, in full of all drawbacks; except that from every ton of spirits drawn from barley, malt, or other corn, there shall be paid by the officers of the customs, when barley is 1*l*. 4*s*. a quarter, or under, 1*l*. 10*s*. in like manner as for corn exported.

33 G.2. c.9. And by stat. 33 *G*.2. *c*.9. § 7. There was to be an additional drawback of 24*l*. 10*s*. a ton on all *British*-made spirits exported:

oath being made before two commissioners of excise, or justices of the peace, that the duties were paid, and that the same were to be exported for *merchandize* to be spent beyond the seas. 33 G.2. c.9.

§ 8. No drawbacks shall be allowed for any *British*-made spirits, exported as merchandize in any cask containing less than 100 gallons, or in any vessel of less burden than 100 tons, except (by 6 *G.*3. *c.*46. § 9.) to *Africa* and *Newfoundland*, unto which places they may be exported as merchandize in vessels not less than 70 tons.

Additional drawback on British-made spirits exported, and shipped as stores.

By stat. 33 *G.*2. *c.*9. § 7. The same drawbacks and allowances shall be made on *British*-made spirits *shipped as stores*, or spent on shipboard, on giving five days notice thereof to the commissioners of excise or to whom they shall appoint, mentioning therein the destination of the voyage, the tonnage of the ship, and the number of mariners intended to be employed; which said commissioners, or person appointed by them, shall ascertain the quantity of such spirits which shall be shipped on board such vessel as stores, and the size and marks of the casks in which such spirits shall be shipped: And on oath being made before one commissioner or justice of the peace, or other person authorized by the commissioners, that the duties are paid, and that the same are to be shipped as stores to be spent in the voyage, and on certificate from the officer of excise where such spirits were shipped of the quantity so shipped, and that the same were proof spirits and shipped in the presence of such officer, the duty shall be allowed or paid back.

§ 8. But no drawback shall be allowed for spirits shipped as *stores* in any vessel of less than 100 tons burden.

Such spirits shipped as stores, being relanded.

§ 10. If any such spirits shipped for *stores* shall be relanded in *G. B.*, *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, unless in case of distress to save the goods from perishing (of which notice shall immediately be given to the proper officer,) then, not only all such spirits and the casks or other package shall be forfeited, but also the person who shall bring or procure such spirits to be relanded, or shall be assisting or otherwise concerned in unshipping the same, or to whose hands the same shall knowingly come after the unshipping, or by whose privity or direction the same shall be relanded, shall forfeit double the amount of the drawback, and also the casks and other package, together with the vessels and boats, and all the horses or other cattle and carriages whatsoever made use of in landing, removing, or carrying the same; which may be seized by any officer of the custom or excise. Master assisting therein, or conniving thereat, shall (over and above all other penalties) be imprisoned for six months. And if the package shall be altered at any time after the shipping thereof, and before the arrival of the ship at the place of discharge, the master, or other person taking charge of the vessel, shall forfeit 100*l.*

2 G.3. c.5.
42 G.3. c.93.
All spirits shipped for stores shall be openly stowed, &c.

By stats. 2 *G.*3. *c.*5. § 29.—42 *G.*3. *c.*93. § 12. All spirits made in *G. B.* for exportation, shipped for stores, shall, during the time the ship is within the limits of any port of this kingdom, be openly stowed, so that the officers may at any time examine the same, on pain of forfeiting the double duties which the wort or wash from whence such spirits were extracted would have been chargeable with, had they been extracted from wort or wash made in *England* for extracting spirits for home consumption from malt, corn, grain, or tilts, at the rate of 100 gallons of wort or wash for every 24

gallons of such spirits; which charge shall be paid by the master of the ship.

Exportation of rum.

See stat. 33 *G.2. c.*28. § 3, 4, 5. 7.

33 G.2. c.28. Rum, &c. exported.

Notice.

By stat. 33 *G.2. c.*28. § 11. All such rum or spirits so to be exported shall be proof spirits; and when any person shall be desirous of shipping any quantity, he shall give notice in writing to the officer of excise of the division or place from which the same are to be shipped, five days before put on shipboard; in which notice shall be expressed the number of casks, and the quantity intended to be shipped: and it shall be lawful for the officers, before the delivery thereof from the warehouse, or at any time afterwards, to mark every cask and package in such manner as the commissioners of excise shall direct, and to take samples (not exceeding one pint) out of each cask or package, paying (if demanded) a market price for the same. And in case any person shall ship such rum or spirits without giving such notice, or shall obstruct the officers in marking the casks, or in taking samples, he shall forfeit 100*l.*

Samples.

28 G.3. c.37. Officers may take samples.

By stat. 28 *G.3. c.*37. § 16. When any person shall have given such notice of shipping rum or spirits, as required by 33 *G.2. c.*28. it shall be lawful for any officer of excise, before the delivery thereof from the warehouse, and at any time afterwards, to take as many samples of such rum or spirits as he thinks fit (neither of such samples exceeding half a pint) out of each cask or package, paying (if demanded) after the rate of 3*s.* per gallon; and if any person shall obstruct him in taking such samples, he shall forfeit 100*l.*

33 G.2. c.28. Rum, &c. concealed, or not shipped within 12 hours, or casks opened or reduced, &c.

By stat. 33 *G.2. c.*28. § 8. If such rum or spirits, after delivery from the warehouse, shall be lodged in any other warehouse or place, so as to be concealed from public view, or shall not be shipped within twelve hours after the delivery, or if the cask or package shall be wilfully opened, or any part of the spirits taken out, or if the quality thereof shall be altered, the same shall be forfeited, with the casks or other package, and may be seized by any officer of excise; and the person who gave bond for the exportation thereof shall, upon proof of such offence, be subject to the penalty of it, and it shall be put in suit; unless the commissioners of excise shall find sufficient cause to forbear the same.

Rum, &c. reduced after being shipped.

§ 11. If such rum or spirits shall, after the shipping thereof, and after having been examined by the officer, be altered or reduced in quality or quantity, the same, and the casks or packages shall be forfeited; and the person who so altered or reduced, or caused the same to be altered or reduced, shall forfeit 100*l.*, and no drawback or allowance of the duties shall be made for the same.

28 G.3. c.37. Rum, &c. shipped as stores being re-landed.

By stat. 28 *G.3.* c.37. § 18. If any such rum or spirits *shipped as stores* shall be relanded, the same, together with the casks or other package, and also the boats, vessels, horses, cattle, and carriages made use of in relanding or removing thereof, shall be forfeited, and may be seized by any officer of customs or excise: and every person who shall so unship or cause to be unshipped, any such rum or spirits, or shall be assisting or concerned therein, or to whose hands the same shall knowingly come, shall forfeit treble the value thereof; and if any master or other person on board such vessel shall assist in, or connive at such relanding, he shall (over and above all other penalties) forfeit 100*l.*

By stat. 57 *G*.3. c.123. § 16. Any cask not containing less than 60 gallons of rum, of the growth or produce of the *British* sugar plantations, may be shipped as stores to be spent on board any ship in a voyage to parts beyond the seas, freed from the duties of excise, but subject to the rules, regulations, penalties, and forfeitures by the laws now in force. 57 G.3. c.123. Rum may be taken out of warehouse and allowed to be shipped in casks containing not less than 60 gallons, as stores, to be consumed on board, free from duty.

No rum shall be shipped for stores (except by permission of the commissioners of excise) but at the port at which the ship is fitted out for the voyage; and the oath required to be made, that the same is to be shipped as stores, and consumed in the voyage, shall be made by affidavit in wiiting by the master or purser of the ship. Conditions.

If the contents of any cask of rum shipped for stores shall be drawn off, or the rum or any part thereof used or altered, either in quantity or quality, before the ship shall have sailed upon her voyage, such cask, and the rum therein contained or drawn off, shall be forfeited, over the penalty of the bond given on the shipment, and may be seized by any officer of excise. Penalty.

By stat. 1&2 *G*.4. *c*.94. It is enacted, that it shall not be lawful to export or to enter for exportation from any part of *G.B.* to the islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, or to any or either of them, under the penalty of the forfeiture thereof, to be seized by any officer of the customs or excise, any rum of the production and manufacture of the *British* colonies or plantations, unless permission be first given for that purpose by the commissioners of H.M.'s customs in *England*, or any four or more of them, by licence under their hands; and the said commissioners, or any four or more of them, are hereby authorized and required, on application to them in writing for that purpose, to grant their licence from time to time under their hands (such licence to continue in force 30 days from the date thereof and no longer), to any of H.M.'s subjects, to export from any port in *England*, in *British*-built ships, owned, registered, and navigated according to law, and not of less burthen than 70 tons (according to the rules for admeasurement prescribed by law), to the said islands of *Jersey*, *Guernsey*, *Alderney*, and *Sark*, any rum of the production or manufacture of the *British* colonies or plantations, in such quantities as shall be approved of and directed from time to time by the commissioners of H.M.'s treasury, or any three of them. 1&2G.4. c.94. No rum of the British colonies shall be imported from Great Britain to Jersey, &c. on pain of forfeiture, unless permission be given by the commissioners of customs, who may grant licence to export rum under the conditions here in mentioned.

(*d*) Spirits made in England to be exported to Scotland, or in Scotland to be brought to England.

By stat. 33 *G*.3. *c*.61. § 29. Spirits distilled in *England* for exportation to *Scotland*, or in *Scotland* to be brought into *England*, are to be subject to the rules and regulations contained in stat. 28 *G*.3. *c*.46. (made perpetual by stat. 33 *G*.3. *c*.28. § 24.) 33 G.3. c.61.

By various acts of parliament, a duty was directed to be paid by every distiller and rectifier in *England* for exportation to *Scotland*, according to the cubical contents of every still belonging to the party applying (exclusive of a duty to an equal amount on *Scotch* stills.)

But by stat. 43 *G*.3. *c*.69. The duties of excise are consolidated, and all the duties, allowances, bounties, and drawbacks of excise, 43 G.3. c.69.

43 G.3. c.69. and other duties under the management of the commissioners, cease and determine, and certain other duties are imposed in lieu thereof. And by the said act 43 *G*.3. *c*.69. and also *c*.81., certain duties are imposed on the cubical contents of stills used for distilling low wines and spirits in *Scotland*, *&c.*, and also a duty on certain licences to be taken out there by dealers in spirits; which duties being extraneous to matters that concern jurisdictions in *England*, are omitted to be particularized here. See also stats. 51 *G*.3. *c*.59. — 54 *G*.3. *c*.172.

And by stat. 39 & 40 *G*.3. *c*.73. § 3. Spirits distilled in *England* for exportation to *Scotland*, are exempted from the excise duties in *England*.

43 G.3. cc.69. 81. Duties, &c. proportionate to the quantity.

And by stat. 43 *G*.3. *c*.69. § 5. and *c*.81. § 5. All duties and drawbacks under these acts shall be proportionate to the actual quantity.

45 G.3. c.100. Regulations for distilling spirits in England for exportation to Scotland, and in Scotland for exportation to England, &c.

By stat. 45 *G*.3. *c*.100. § 1. No person shall distil in *England* any spirits for exportation to *Scotland*, or in *Scotland* for exportation to *England*, in any house or place entered or not entered, within the distance of one mile from any house or place entered for keeping *British* spirits for sale in quantities of two gallons or upwards, or which shall then be, or within one year immediately preceding, shall have been entered for making or distilling spirits for exportation to foreign parts, or for making or distilling spirits in *England* for the consumption of *England*; nor shall any person make or distil in *England* any spirits for the consumption of *England*; or make use of any house or place for the keeping of *British* spirits for sale in quantities of two gallons or upwards, within the like distance of one mile from any house or place entered, or which shall within one year immediately preceding have been entered, for making or distilling spirits for exportation from any one of the said parts of the united kingdom to the other of them; on pain of forfeiting in every such case 500*l*., together with every still, mash tun, cooler, washbatch, and other utensil; and also all the spirits, wort, wash, or other materials fit for distillation, which shall be found in any such house, &c., and they shall be seized by any officer of excise: provided always, that nothing in this act contained shall extend to prevent any person not being such distiller of spirits for such exportation, nor concerned therein, from entering and making use of any house, &c. for keeping *British* spirits for sale in quantities of two gallons or upwards, within any distance not less than one hundred yards of any house, &c. which shall be, or which, within one year immediately preceding, shall have been entered for distilling or making spirits for such exportation; nor to prevent any distiller for such exportation, from making entry of any house, &c. for distilling for such exportation, within any distance not less than one hundred yards of any house, &c. which shall be, or which, within one year immediately preceding, shall have been entered for keeping *British* spirits for sale in quantities of two gallons or upwards, provided such distiller shall not have any interest in the trade carried on in any such house, &c. entered for keeping *British* spirits for sale as aforesaid.

Penalty.

No house entered for distilling for exportation to England or Scotland shall be

By § 6. No place entered for making spirits for exportation to *England* or *Scotland*, shall be entered for distilling for internal consumption, within the year (reckoning from the first of *October*,) in which it shall have been entered for making spirits for such exportation, nor until all the worts and wash remaining shall have

been distilled into spirits, and the whole of the spirits actually exported. 43 G.3. c.69.

used for distilling for internal consumption.

By § 14. The entry of the place for distillation is to be made at no other time than the first of *October*, &c. and the licence to commence on that day.

28 G.3. c.46. Entry to be made.

By stat. 28 *G.* 3. *c.* 46. § 35. After reciting that it is expedient that spirits made in *England* to be exported to *Scotland*, or made in *Scotland* to be exported to *England*, should be under certain rules and regulations, it is enacted, that all distillers who shall distil spirits in *England* to be exported to *Scotland*, and contrariwise, shall make four days previous entry of the stills and places used by them for that purpose; and shall give notice of the day they intend to begin to brew, and from what sort of materials; on pain of forfeiting 100*l.*

§ 35. And if such distillers shall not begin their operation in an hour after the time specified in such notice, they shall give a fresh one, on the like penalty.

45 G.3. c.100. The time of beginning to work the still.

And by stat. 45 *G.*3. *c.*100. § 5. No distiller shall be permitted to make entry of any house or place for the making or distilling of spirits for such exportation, to commence working at any other period than the first day of *October* in each year, and every wash-still, after the working thereof shall have commenced, shall be presumed to be kept regularly at work for the space of three calendar months successively at the least, to be computed from the day of beginning to work the same; and no person who shall have begun to work any such wash-still as aforesaid, shall be at liberty to discontinue or to withdraw the entry of any such wash-still, after the working thereof shall have commenced and been begun, until the expiration of that term so computed; and if he shall be desirous to discontinue the working at the end of the said term, or at any subsequent period previous to the first of *October* then next, he shall give to the proper officer of excise fifteen days previous notice in writing of such his intention.

28 G.3. c.46. 33 G.3. c.61. and 45 G.3. c.100. Size of the still.

By stats. 28 *G.*3. *c.*46. § 36. — 33 *G.*3. *c.*61. § 29. — 45 *G.*3. *c.*100. § 2. No such distiller shall be permitted to make entry, or give notice of his intention to make spirits in *England* to export to *Scotland*, whose wash-still will not contain 3,000 gallons including the head, and his spirit or low wine still ⅓th of his wash-still: nor shall he be permitted to distil spirits for such exportation, although he may have made entry as aforesaid, unless he shall have distilled into spirits all the wash and low wines in his custody, for the making spirits for home consumption, 48 hours before the day mentioned in such entry.

45 G.3. c.100. Proportion of the still.

By stat. 45 *G.*3. *c.* 100. § 3. The widest diameter of the still shall not exceed the altitude measured by a perpendicular line, drawn from the center of the bottom of the still to the center of the collar or lip, exclusive of the head, in a greater proportion than one-half of such altitude, nor shall the diameter at the bottom exceed the altitude, nor shall the bottom be curved excepting inwards or towards the bottom.

28 G.3. c.46. Distillers not duly charging or working wash-stills.

By stat. 28 *G.*3. *c.*46. § 44. Every distiller, before he shall begin to draw off any low wines from his wash-still, shall charge the same with wort or wash in the proportion of not less than four parts in five of the whole quantity such still will contain; and shall work off the same in 24 hours, on the penalty of 200*l.*

45 G.3. c.100. Manner of charging the still.

And by stat. 45 *G*.3. *c*.100. § 4. Every such entered wash-still shall every time the same shall be worked be presumed to be charged with wort or wash in the proportion of four parts in five of the capacity of such still, including the head thereof, according to the average rates herein-after specified, (that is to say,) for such times as such wash-still shall be worked, the same shall be presumed to be charged as aforesaid, at the average rate of not less than six times in each week: and such wash-still shall not be charged or worked oftener than six times in each week on an average of the time for which such still shall be worked in any one year, reckoning from the 1st day of *October;* and if any distiller shall charge his wash-still oftener than such average, during the continuance of such entry in any one year, he shall for every working beyond such average pay duty at the rate of 20*s*. *per* gallon, computed at the produce of 18 gallons of spirits at the strength of one to ten over hydrometer proof, for every 100 gallons of wort or wash which such wash-still would require to charge it four parts in five of its contents.

39&40 G.3. c.73. Spirits distilled and wash for extracting spirits for exportation to Scotland.

By stat. 39&40 *G*.3. *c*.73. § 3. Spirits distilled in *England* for exportation to *Scotland,* according to the 28 *G*.3. shall not be chargeable with excise duty in *England*. By stat. 28 *G*.3. *c*.46. § 46. Wash for extracting spirits for exportation from *England* to *Scotland* shall not be chargeable with any excise duty.

28 G.3. c.46. Regulations for drawing spirits for exportation from stills.

By stat. 28 *G*.3. *c*.46. § 48. No wash that shall be brewed or mixed by any such distiller for extracting spirits for such exportation, shall be pumped up into the still, or removed from the vessel where it was fermented, but in the presence of the surveying officer; and shall be gauged and secured in a warehouse under three locks and keys, one thereof to be kept by the distiller, another by the supervisor, and the third by the gauger. And such distillers, removing wash from backs, or removing or running off spirits from stills contrary to this act, or obstructing the officer in taking samples, &c. or neglecting to provide warehouses, &c. or opening any doors in the absence of the officer; or removing spirits, or concealing wash, &c. shall forfeit 200*l*.

Spirits that cannot be locked in warehouses.

§ 49. If such spirits distilled in one day cannot, for want of time, be conveyed to and locked up in the warehouse, they shall be gauged and secured in the spirit cask; and for every gallon decreased therein, such distiller shall forfeit 10*s*.

Notice of taking spirits from warehouses.

§ 50. If such distiller shall be desirous of taking any such spirits from the warehouse, he shall give four hours previous notice to the officer, who shall attend and see the same taken out; and if not taken out within one hour of the time specified in the notice, a fresh one shall be given; and in default of giving such notice, or specifying therein the particulars required by this act, or beginning to work without a fresh notice, he shall forfeit 100*l*.

Raw spirits taken out of the warehouse to be rectified.

§ 51. When any raw spirits shall be taken out of any warehouse to be rectified, the same shall be in the presence of the officer, and shall be rectified forthwith, and put into casks, and shall be made to the proper strength, and gauged, and either put on shipboard, or into such warehouse as aforesaid.

§ 52. On taking out spirits from warehouses to be rectified, an allowance shall be made of two gallons for every 100 gallons of decrease; and for any extra deficiency not properly accounted for, a duty shall be paid of 5*s*. *per* gallon.

§ 52. Spirits may be sent from the warehouse of any maker of spirits to any other distiller, under certain regulations specified in the act. 28 G.3, c.46.

§ 54. And bond shall be given for the due exportation of such spirits; and if the same shall be afterwards unshipped or laid on land (unavoidable accidents excepted), the same shall be forfeited, and may be seized by any officer of excise. Bond.

By stat. 45 *G.3. c.*100. § 13. Before any person shall begin to prepare or brew any wort or wash to be distilled as aforesaid, he shall give bond with two sufficient sureties, (the bond to be taken in H. M's. name), himself in the penalty of 20*s.* and the sureties jointly and severally in the penalty of 5*s.* for every gallon of the capacity of the wash-stills, including the heads thereof, employed by such distiller, conditioned for his duly observing all the rules contained in this act; and in default of such bond, every entry made by him shall be void to all intents and purposes. 45 G.3. c.100. Distillers to give bond with sureties for the performance of the regulations of this act.

By stat. 28 *G.3. c.*46. § 57. Entry shall be made with the excise collector of all spirits imported from *Scotland*, and the import duty paid, and spirits landed in 20 days after arrival, otherwise the same shall be forfeited, together with the casks and packages, which may be seized; and such spirits shall be publicly sold to satisfy the duty, and the overplus to go to the officer who seized the same, and if they do not satisfy the duty, or only barely, the officers shall be rewarded not exceeding 1*s. per* gallon. 28 G.3. c.46. Entry to be made of spirits brought from Scotland.

§ 58. In the entries of spirits imported from *Scotland*, the number of casks or other packages containing such spirits, and the numbers and marks of each, shall be inserted, on pain of forfeiting such spirits, casks, and package, which may be seized.

§ 59. No spirits shall be sent from *Scotland* to *England*, or from *England to Scotland* by land, or in vessels of less than 70 tons burden, or in casks containing less than 100 gallons, on forfeiture thereof, together with the casks or package; and also the vessels, boats, horses, cattle, and carriages employed therein, which may be seized. Size of the vessels and casks.

§ 60. If spirits shall be imported into *Scotland* from *England*, or into *England* from *Scotland*, of a strength greater than one to ten over hydrometer proof, they shall be forfeited, together with the casks and package, which may be seized. Provided that if the spirits manufactured in *Scotland*, and imported into *England*, be of a greater strength than as aforesaid, and such excess shall not exceed three *per centum* over and above the said strength, such spirits shall not be forfeited, but shall be charged with a further duty proportioned to their said surplus strength. Strength of spirits.

By stat. 45 *G.3. c.*100. § 7. Every such distiller shall produce, and duly export to *Scotland*, at least 18 gallons of spirits at the strength of one to ten over hydrometer proof for every 100 gallons of wort or wash which shall be made by such distiller; and if any such distiller shall not so do, or shall not produce and so export a quantity of spirits at the said strength, equal to the quantity which ought to be produced by regularly working his wash-still, charged in the proportion and worked the average number of times herein-before required, such distiller shall for every neglect, for the whole quantity of spirits which shall appear to be deficient, pay duty for the same at and after the rate of 20*s.* for every gallon of such spirits so deficient. 45 G.3. c.100. Distillers for exportation to export a quantity of spirits in proportion to the quantity of wash, or in default to pay a higher duty by way of penalty.

1&2 G.4. c.82. 3 G.4. c.76. § 1. Distillers for exportation to England and Scotland respectively shall keep the spirits distilled by them for the year in distinct warehouses, apart from others, and shall export and pay duty for 19 gallons of the strength of 7 per cent. above hydrometer proof for every 100 gallons of wash distilled, except such as shall be exported to Ireland, &c.

Penalty for not keeping spirits in distinct warehouses, &c. 20*s.* per gallon, or 500*l.*

By stat. 1&2 *G.*4. *c.*82. § 10. stat. 59 *G.*3. *c.*53. § 23. is repealed. And by § 11. and 3 *G.*4. *c.*76. § 1. Every distiller in *England* for exportation to *Scotland*, and in *Scotland* for exportation to *England*, shall deposit, store, and keep all the spirits made at his entered distillery for exportation, in every year ending on the 30th day of *September*, in a distinct warehouse, separate from all spirits made in any other year ending as aforesaid, and from all other spirits; and shall in every year ending on the 5th day of *January* export to, land, and pay duty for, in *Scotland* or *England* respectively, as the case may be, 19 gallons at the least of spirits of the strength of seven *per centum* above hydrometer proof, for every 100 gallons of wort or wash which shall be distilled into spirits by such distiller, or at such distillery, in the year ending on the preceding 30th day of *September*, except so much of such spirits as shall, in the like proportion, and computed at the strength aforesaid, be before the said 5th day of *January* exported by such distiller, directly from his stock of spirits distilled in the year ending on the preceding 30th day of *September*, to and landed in *Ireland*, under the regulations contained in stat. 54 *G.*3. *c.*149., for regulating, until the end of the next session of parliament, the trade in spirits between *G. B.* and *Ireland;* and also except so much of such spirits as shall, after being shipped for exportation as aforesaid, be lost by shipwreck; and if any such distiller shall not deposit, store, and keep all the spirits by him or her made or distilled, or made or distilled at his or her entered distillery for exportation as aforesaid, in every year ending on the 30th day of *September*, in a distinct warehouse, separate from all spirits made in any other year ending as last aforesaid, and from all other spirits, every such distiller shall forfeit the sum of 20*s.* for every gallon of spirits not deposited, stowed, and kept by him as aforesaid, or of 500*l.*, at the election of the person who shall sue for the same; and if any such distiller shall, in any year ending on the 5th day of *January*, fail, neglect, or refuse to export to, land, and pay duty for, in *Scotland* or *England* respectively, as the case may be, 19 gallons at the least of spirits of the strength aforesaid, for every 100 gallons of wort or wash which shall be distilled into spirits by such distiller, or at such distillery, in the year ending on the preceding 30th day of *September* as aforesaid (except as aforesaid), or shall not, within one month after the expiration of such year ending on the 5th day of *January*, pay duty in *Scotland* or *England*, as the case may be, being that part of the U.K. to which such quantity of spirits is hereby required to be exported, landed, and duty paid as aforesaid, at and after the rate of duty chargeable by law for such spirits, for every gallon of such spirits below or short of such proportion, which any such distiller shall fail to land and pay duty for, every such distiller shall, for every such default, neglect, or refusal, forfeit the sum of 20*s.* for every gallon of such spirits not exported, landed, and paid duty for, (except as aforesaid), in such period.

Penalty for neglecting to export and pay the duty, 20*s.* per gallon.

1&2 G.4. c.82. Spirits removing by land from Scotland into England, or removed or offered for sale,

§ 12. After reciting that whereas spirits brought by land from *Scotland* into *England* are respectively forfeited; but it is expedient that more effectual provision should be made to prevent persons privately distilling spirits, and removing, harbouring, and concealing spirits, on the borders of *Scotland* and *England*, enacts, that if any person shall remove or cause to be removed, or

sell or deliver, or offer for sale or delivery, or buy, receive, harbour, or conceal, any spirits brought or removed by land from *Scotland* into *England*, or any spirits for the removal of which any permit or certificate is required, and which shall not be accompanied with such permit or certificate for the removal thereof, specifying therein that all the duties of excise payable in respect of such spirits have been paid, or secured to be paid, all such spirits so removing or removed, or sold or delivered, or offered for sale or delivery, or bought, received, harboured, or concealed, and the package or packages containing the same, and the waggons, carts, and other carriages, horses and other cattle, used or employed in removing the same, and every of them, shall be forfeited, and shall be seized by any officer of excise, or by any person acting in the aid and assistance of any such officer; and every person removing, selling, delivering, or offering for sale or delivery, or buying, receiving, harbouring, or concealing any such spirits, or in any respect concerned in removing, selling, delivering, or offering for sale or delivery, or buying, receiving, harbouring, or concealing any such spirits, whether such spirits be seized or not seized, shall for every such offence forfeit the sum of 40*s*. for every gallon of such spirits removed, sold, delivered, or offered for sale or delivery, or bought, received, harboured, or concealed, or the penalty of 100*l*., at the election of H. M.'s attorney general, or the person who shall sue or prosecute for the same; and it shall be lawful for any such officer and for any person acting in his aid and assistance, to stop, arrest, or detain in any part of the U. K. of *Scotland* or *England*, any person or persons removing, selling, delivering, or offering for sale or delivery, any such spirits, in whichever part of the U. K. of *England* or *Scotland* such person or persons so offending shall commit any such offence, and to take him, her, and them before any one or more of H. M.'s justices of the peace for *Scotland* or *England;* and it shall be lawful for such justice or justices of the peace, notwithstanding such offence shall not be proved to have been or shall not have been committed within his or their jurisdiction, and he and they is and are hereby respectively authorized and required, upon proof on oath by one or more credible witness or witnesses, that such person or persons did remove, sell, or deliver, or offer to sell or deliver any such spirits brought or removed by land from *Scotland* into *England*, or any spirits for the removal of which any permit was required, and which was not accompanied with such permit for the removal thereof, specifying therein that the duties payable in respect of such spirits have been paid or secured to be paid, whether such spirits be or be not seized, to hold each of such persons to bail with two good and sufficient sureties in the sum of 100*l*. each, for the appearance of such person to answer to any information that may be exhibited or filed against him for any penalty or penalties incurred by such offence, and to pay such penalty and penalties and abide any judgment for any such offence; and in default of any such person finding such good and sufficient bail as aforesaid or until the same shall be found, to commit such person to any gaol or prison or house of correction within the jurisdiction of such justice or justices, to answer as aforesaid.

Provided, that nothing herein contained shall extend to repeal

1&2 G.4. c.82.

&c. shall be forfeited, with the carriages, &c. employed.

Persons concerned in removing, selling, and buying such spirits shall forfeit 40s. for every gallon, or 100l., and be held to bail for their appearance.

Not to repeal

1&2 G.4. c.82. any other penalty or forfeiture, imposed by any law in force at the time of passing this act relating to spirits.

any other penalty imposed by law.

45 G.3. c.100. Penalty on removing spirits otherwise than for exportation.

By stat. 45 *G.*3. *c.*100. § 9. If any person shall take, remove, or carry away or aid therein, from any such house, &c. or from any other place in which any spirits so made shall be lodged (except for the sole purpose of exportation directly to *Scotland*), he shall for every such offence forfeit 100*l.* over and above all penalties or forfeitures to which the proprietor or maker may be liable; and any officer of excise, and all other persons acting in his aid, may arrest and detain every person so taking, &c. and convey him before one justice for the county, &c. wherein he shall be so arrested or detained; and such justice on confession of the party, or on proof by oath of one witness, shall convict, and the person so convicted shall, immediately on such conviction pay the said sum of 100*l.* into the hands of such officer of excise, to be applied in manner herein-after directed; and on refusal to pay, the justice so convicting shall, by warrant under his hand and seal, commit such offender to the house of correction for the said county, &c. there to be kept to hard labour for 12 calendar months from the day of such conviction; and such person shall not be discharged until payment of the said sum of 100*l.* or until the expiration of the said 12 calendar months.

28 G.3. c.46. Permit.

By stat. 28 *G.*3. *c.*46. § 61. Spirits sent by water from *England* to *Scotland*, or the contrary, shall be accompanied with a permit, on pain of forfeiture thereof, and also the casks and packages, which may be seized. But the same shall not be liable to seizure on account of any small difference or deficiency in the gauge at their arrival, when the same is proved to have been occasioned by accident, and without fraud.

Obstructing the officers.

§ 78. If any distiller, rectifier, compounder, or dealer in spirits, or servant belonging to any such person, shall obstruct any officer in the execution of this act, he shall forfeit 200*l.*

45 G.3. c.100. A sample to be taken of all British spirits.

And by stat. 45 *G.*3. *c.*100. § 11. It shall be lawful for the proper officer of excise who shall attend the warehousing or making up of *British* spirits distilled for exportation to *Scotland*, to take a sample not exceeding half a pint out of every vat, &c. that shall be stored, which sample, after the strength shall have been ascertained, shall be labelled with the number of such vat, &c. and the day and year when taken, and shall be sealed and securely kept under the joint locks of the proper surveyor or supervisor and officer until the expiration of three calendar months after the spirits to which such samples refer shall have been duly certified to have been so exported; and at the expiration of such time every such sample shall be sold under the direction of the commissioners of excise, and of the produce thereof, after deducting the charges of keeping and selling the same, a sum after the rate of 3*s.* *per* gallon shall be paid to the distiller from whose stock the same was taken.

Distillers once in six or seven weeks to make out an account of quantities distilled, and return the same verified on oath to the collector of excise.

By § 12. Every such distiller shall once in every six or seven weeks deliver to the proper collector an account of the worts or wash made within such time, and of the quantity actually distilled within the same period, and also of the quantity of spirits computed at the strength of one to ten over hydrometer proof which have been actually made by such distiller, together with an account of such spirits so computed, sent, or exported within the same period to *Scotland*; and every such distiller shall make oath

to the truth of such account before such collector, (which oath such collector is hereby empowered to administer); and for every neglect or refusal so to do, such distiller shall forfeit 200*l.*

By § 15. The pains and penalties for wilful and corrupt perjury are imposed upon any person taking a false oath under this act. 45 G.3. c.100.

(*e.*) Matters relating to Importers and Dealers in Spirits by Wholesale and Retail; and the recovering and Application of Penalties.

43 G.3. c.69. Licence to brandy dealers.

	£	s.	d.
By stat. 43 *G.*3. *c.*69. Every dealer in brandy or other spirituous liquors or strong waters, (not being a retailer in any part of *G. B.*, or not being a wholesale dealer in plain aqua vitæ only, distilled from malt, corn, grain, barley, beer, bigg, or other *British* materials in *Scotland*,) shall annually take out a licence, for which he shall pay	5	0	0
And by stat. 55 *G.*3. *c.*30. (continued by stat. 3 *G.*4. *c.*27. until 5th *July* 1826), additional - - -	5	0	0

And by stats. 24 *G.*3. *sess.*2. *c.*41. § 7. and 29 *G.*3. *c.*63. § 7. (*a*) the said licence shall be renewed ten days at least before the end of the year, on pain of 100*l.* 24 G.3. sess.2. c.41. 29 G.3. c.63.

By stat. 6 *G.*1. *c.*21. § 18. Every person who shall have in his custody above 63 gallons shall be deemed a *seller* and *dealer* in such liquors. 6 G.1. c.21. Who deemed a *seller* and *dealer*.

By stat. 56 *G.*3. *c.*113. The several duties on excise licences for retailing spirits were repealed, and certain other duties imposed; which were again repealed by stat. 5 *G.*4. *c.*54. § 1.; and by § 2. every retailer of distilled spirituous liquors or strong waters in *G. B.* (not being a retailer of plain aqua vitæ only made or distilled from *British* materials in that part of *G. B.* called *Scotland*,) shall from and after 10th *Oct.* 1824, annually take out an excise licence for that purpose, and shall pay the following duties for every licence to be taken out as aforesaid: 56 G.3. c.113. 5 G.4. c.54. Licence for retailing spirits. 5 G.4. c.54.

	£	s.	d.
If the dwelling house in which such retailer shall reside, or retail such distilled spirituous liquors or strong waters, at the time of taking out such licence, shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of parliament, for granting duties on inhabited houses, at a rent of 20*l.* *per ann.* or upwards - -	4	14	0
If at 20*l.* *per ann.* or upwards, and under 25*l.* -	6	6	0
If at 25*l.* *per ann.* or upwards, and under 30*l.* -	7	7	0
If at 30*l.* *per ann.* or upwards, and under 40*l.* -	8	8	0
If at 40*l.* *per ann.* or upwards, and under 50*l.* -	9	9	0
If at 50*l.* *per ann.* or upwards - - -	10	10	0

§ 13. Which licence shall expire upon the 10th day of *October* in each year; and by § 14. reciting, "Whereas licences to keep common inns, alehouses or victualling-houses, are in some parts of *G. B.* granted by the justices and magistrates at other parts of the

(*a*) The 100*l.* penalty is inflicted on the supposition that no such provision existed; whereas by the preceding stat. of 24 *G.*2. a penalty of 30*l.* was directed to be paid on such failure. The 100*l.* therefore must be taken in lieu thereof.

5 G.4. c.54. year than in *September* in each year, and excise licences to retail beer, spirits, and foreign wine respectively, in such common inns, &c. have been granted, and are now in force;" it is enacted, that nothing in this act shall alter or affect any licence duly granted and now in force, to retail or sell beer, spirits or wine, in any common inn, &c. before the expiration of the current year, for which each such licence respectively has been granted; but that in every such case all such licences to retail spirits or wine in any such common inn, alehouse, or victualling house, shall, on their previous expiration, be renewed for such part only of the current year for which such common inn, alehouse, or victualling house shall be so authorized to be kept and continued; and that the commissioners of excise, and other persons authorized or appointed by them, and the several collectors of excise, are hereby authorized to receive from the several persons liable to pay the same, a proportionate part of the duties payable on every such licence, and to grant such licence for such fractional part of the year between the time when any such licence shall expire, and the remainder of the year for which such common inn, alehouse, or victualling house shall be so duly authorized to be kept and continued: and that in every future year, every excise licence to sell beer, spirits, or wine, in any common inn, &c. duly authorized to be kept, shall be granted for the year ending on the next succeeding excise quarter day, after the expiration of the year for which such common inn shall be authorized to be kept, and shall then respectively expire, and be renewed under the provisions of this act to the day of renewal.

Saving for former acts. By § 12. All the powers, regulations, restrictions, &c. of former acts relating to the retail of spirits shall continue in full force and be put in execution throughout *G. B.* as to the several duties by this act imposed.

Duties how managed and applied. By § 4. The duties hereby granted shall be under the management of the commissioners of excise for the time being, and levied as former licence duties of excise, except where altered by this act. § 5. Duties to be carried to the consolidated fund.

17 G.2. c.17. 30 G.3. c.38. Who is a *retailer of spirits*. By stats. 17 *G.2. c.*17. §19. & 30 *G.3. c.*38. § 15. Every person who shall sell or expose to sale any distilled spirituous liquors or strong waters mixed or unmixed, in less quantity than two gallons shall be deemed a *retailer*. (And see p. 305. 311.)

Licence to be renewed annually. By stat. 30 *G.3. c.*38. § 9. such licence shall be renewed annually, ten days at least before the expiration of the former licence, on penalty of 50*l.*

Partners. § 10. But persons in partnership need only take out one licence for one house, shop, or place.

53 G.3. c.103. And by stat. 53 *G.3. c.*103. Upon the death of any person, or the removal of any person from the house or premises in which his licence shall authorize him to deal in or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorize the executors, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade during the residue of the term.

To be first licensed to sell ale. By stats. 9 *G.2. c.*23. § 14. 16 *G.2. c.*8. § 11. 5 *G.3. c.*46. § 22. No person shall have a licence to retail spirituous liquors, until

he shall have been licensed to sell ale or spirituous liquors by two justices.

In the case of *R.* v. *Downes* and another, 3 *T. R.* 560. it was determined that a person who sells spirituous liquors by retail without a licence from two justices, is liable to the penalties of stat. 5 *G.3. c.*46. (*a*), though he have a licence from the commissioners of excise to retail spirituous liquors. See *R.* v. *Drake*, Vol. I. p. 55, 56.

By stat. 9 *G.2. c.*23. § 15. For the more easy convicting of persons who shall sell spirituous liquors by retail without a licence from two justices, or who shall keep a disorderly house where sold, the conviction may be in the following form, or to the like effect: 9 G.2. c.23. Conviction for selling spirits, &c. without a licence from two justices, or keeping a disorderly house.

County of ——— } A. O. *is convicted on his own confession,* (*or on the oath of* A. W.) *of having sold strong waters in the parish of* ——— *in this county, on the* ——— *day of* ——— *without being duly licensed thereto by two justices of peace* [or, as the case may be]. *Given under my hand and seal,* &c.

By stat. 17 *G.2. c.*17. § 18. No licence shall be granted except to such persons only who keep taverns, victualling-houses, inns, coffee-houses, or alehouses, and all other licences shall be void: and if any licensed person shall exercise the trade of a distiller, grocer, or chandler, or keep a brandy shop for sale of spirituous liquors, the licence shall be void, and such person shall forfeit 10*l.* 17 G.2. c.17.

By stats. 24 *G.2. c.*40. § 8. & 26 *G.2. c.*13. § 10. No licence shall be granted within the limits of the head office of excise in *London*, but to such as occupy tenements of 10*l.* a year, and pay parish rates for the same; or in places where the occupiers of houses are not rated to the church and poor, then to such persons as pay a rent of 12*l.* a year, without any deduction or abatement; and not otherwise; nor to persons in any other part of the kingdom, but such as pay to the church and poor: And no licence shall be of any avail longer than he shall be so qualified. 24 G.2. c.40. 26 G.2. c.13.

By stats. 17 *G.2. c.*17. § 21. 27 *G.3. c.*30. § 4. 30 *G.3. c.*38. § 10. No licence shall empower any person to sell spirituous liquors in any place, except in the house or places thereto belonging, wherein they shall retail the same at the time of granting the licence. 17 G.2. c.17. &c. To be licensed only where they dwell.

By stat. 16 *G.2. c.*8. § 9. Retailers of spirituous liquors without a licence from the officers of excise were subject to a penalty of 10*l.* 16 G.2. c.8. Penalty for selling spirits without a licence.

By stat. 24 *G.2. c.*40. § 9. All liquors found in the custody of such persons then, or at any time, within six calendar months after conviction, were to be seized. And by stat. 13 *G.3. c.*56. § 1. and 30 *G.3. c.*38. § 9. After reciting that the said penalty of 10*l.* is sometimes insufficient to deter offenders, it is enacted that if any person shall by himself, or by any other to his benefit, retail any distilled spirituous liquors or strong waters, without a licence from the officers of excise, he shall forfeit 50*l.* to be recovered, (F. G. H. I. K. L.) levied, and mitigated as by the laws of excise (*ante*, § III.) or in the courts of *Westminster*. 24 G.2. c.40.

(*a*) See the penalties of this act, Vol. I. title Alehouses, § III. (*Selling Ale without Licence.*)

13 G.3. c.56. Mitigation.

By stat. 13 *G.*3. *c.*56. § 4. The said penalty shall not be mitigated below the sum of 5*l.*

Retailers' houses to be entered.

By stat. 9 *G.*2. *c.*23. § 6. Every person who shall retail in any less quantity than two gallons, shall ten days before make entry in writing of all warehouses, shops, cellars, or other places by him used or intended to be used, at the next excise office, and of all spirituous liquors therein; on pain of 20*l.* for every such place, and 40*s.* for every gallon concealed and not entered, and also the liquors and casks.

19 G.3. c.69. Certain words to be put up.

By stat. 19 *G.*3. *c.*69. § 18. Every importer for sale, or dealer in foreign brandy, arrack, rum, spirits, or other foreign strong waters, who shall sell the same either by wholesale or retail, shall cause to be painted in large legible characters, over the outer door, or in the front, or on some conspicuous part of every house, shop, warehouse, cellar, vault, or other place so used by him, the words *importer of*, or *dealer in*, *foreign spirituous liquors;* on pain of 50*l.* for every shop, &c.

Buying of persons not having those words put up.

§ 19. 20. And if any importer or dealer in foreign spirituous liquors shall buy, or procure any one to buy to his use, any foreign spirituous liquors of any other person than of an importer, or dealer, over the door of whose shop or other place used for the keeping of foreign brandy, &c. the words aforesaid shall be written or painted, he shall forfeit 100*l.*, over and above all other penalties. —Provided that such dealer shall not be subject to the said penalty, by reason of the purchase of any foreign spirituous liquors whilst they remain on board the ships wherein they were lawfully imported, or on the quays on which they have been lawfully landed; nor to the purchase of any rum whilst it remains in the warehouse, according to the act of 15 & 16 *G.*2.; nor of any arrack, whilst it remains in the warehouses of the *East India* company; nor to the purchase of any prize foreign spirituous liquors, nor of any foreign spirituous liquors sold for the benefit of the insurers or proprietors to defray the charges of salvage.

§ 22. If any person, not being such importer or dealer, shall buy any of the said goods, or procure, &c. (except as before excepted) of any person not having the afore-mentioned words painted over his door as aforesaid; he shall forfeit 10*l.*: and if the seller shall within twenty days, and before any information hath been lodged against him, inform against the buyer, he shall be discharged from all penalties to which he might be liable for such his own offence.

Putting up those words without making entry.

§ 21. If any person, other than such as hath made entry as aforesaid, shall paint over his door the words afore-mentioned, he shall forfeit 50*l.* over and above the penalties for selling or dealing without entry.

9 G.2. c.23. Retailers to give notice of bringing in.

By stat. 9 *G.*2. *c.*23. § 7. No spirituous liquors, or strong waters, shall be brought into any such warehouse or other place, without first giving notice to the officer of excise, and leaving with him an authentic certificate that all the duties are paid, or that they have been condemned as forfeited, and expressing the quantity and quality, the name of the seller, and where the duties were paid, or the liquors condemed; on pain of forfeiting 20*l.* and also the liquors and casks.

8 G.1. c.18. British to be

By stat. 8 *G.*1. *c.*18. § 11. All dealers in foreign brandy or spirits, who shall receive into their custody *British* spirits, shall keep the

same in separate cellars, or other places, from their foreign brandy or spirits; on pain of 10*s.* for every gallon of *British* spirits found in the same place with the foreign spirits, together with the casks in which the said *British* spirits shall be found.

8 G.1. c.18. kept separate from foreign spirits.

By stat. 32 *G.*2. *c.*29. §2. It shall be lawful for the officers of excise to take samples, not exceeding half a pint in the whole, out of each cask or other package containing foreign spirituous liquors in any shop, warehouse, or other place belonging to any dealer in the same; paying for such sample (if demanded) according to the market price liquor of the like quantity shall be sold for at the time of such sample taken.

32 G.2. c.29. Officers may take samples in the shop or warehouse.

By stat. 9 *G.*2. *c.*23. §8. No retailer shall make any increase of the liquors, after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40*s.* a gallon, and the liquors so mixed shall be seized and forfeited.

9 G.2. c.23. Retailer increasing the liquor.

By stat. 8 *G.*1. *c.*18. §12. If the officer of excise shall find any increase of *foreign* brandy, spirits, or strong waters, over and above the quantity which he found at any dealers on the last survey, such increase shall be deemed to be made by foreign brandy, &c. for which no duty was paid; and so much as shall be found increased, shall, together with the cask or other vessel, be forfeited, unless the owner make it appear that the increase was made by mixing therewith, in the presence of the officer of the division, some of his stock of *British* spirits, whereof the officer had taken an account, or by foreign brandy, &c. brought with a permit, or that it had been condemned and brought in on due notice given to the officer.

8 G.1. c.18.

By stat. 21 *G.*3. *c.*55. §29. If the officer shall find any increase in the stock of any dealer in or seller of spirituous liquors, over and above the quantity which he found at his last survey, such increase, whether mixed or unmixed, shall be deemed to be made by a commodity for which no duty has been paid. And so much of the stock as shall be found increased shall be forfeited, and a quantity equal to the increased quantity shall be seized by the officer who shall discover the same; and the person in whose stock such increase shall be found, shall forfeit 20*l.*

21 G.3. c.55. Increase in stock.

By stat. 9 *G.*2. *c.*23. §9. The officer at all times by day or night (but if in the night in presence of a constable, oath being first made before a justice dwelling near, of a probable cause of suspecting the concealment of any such spirituous liquors), may enter into all such warehouses, shops, or other places, and by tasting, gauging, or otherwise, take an account of the quantity and quality; and if any such retailer shall hinder or refuse the officer to enter, he shall forfeit 50*l.*

9 G.2. c.23. Retailer concealing.

By stat. 6 *G.*1. *c.*21. §15. No such liquors shall be sold but in such warehouse, shop, cellar, or other place so entered, on pain of 40*s.* a gallon.

6 G.1. c.21. None to be sold but in entered places.

And by stat. 11 *G.*1. *c.*30. §3. No *arrack*, *brandy*, &c. whether *British* or foreign, shall be offered to sale, either by wholesale or retail, but in an entered place, on pain of forfeiting the same, with the casks or other vessels, besides the said penalty of 40*s.* a gallon.

11 G.1. c.30.

By stat. 26 *G.*3. *c.*73. §54. No licensed retailer of brandy or other spirits shall be the owner of, or have any part or share in any

26 G.3. c.73. Retailers to

have no share in distilleries, &c.

distillery or rectifying house, or be concerned in the trade of a distiller, or rectifier, or compounder, on pain of forfeiting 200*l.*

To be under the jurisdiction of the magistrates.

By stats. 12&13 *W. c.*11. § 18. and 2 *G.*2. *c.*28. § 10. The justices of the peace and other officers shall have the same jurisdiction over such retailers of spirituous liquors as they have over alehouse keepers.

9 G.2. c.23. Hawking in the streets.

By stat. 9 *G.*2. *c.*23. § 13. No person shall hawk, sell, or expose to sale any spirituous liquors about the streets, highways, or fields in any wheelbarrow or basket, or on the water in any boat or vessel, or in any other manner, or shall sell or expose the same to sale on any bulk, stall, or shed, or on or in any other place, other than as above is allowed, on pain of 10*l.* And one justice, on his own view, or on confession, or by proof by one witness, may convict him; whereupon he shall immediately pay the 10*l.* to the churchwarden or overseer; and on refusal or neglect the justice shall by warrant commit him to the house of correction, to be kept to hard labour for two months, to be reckoned from the day of commitment; and he shall not be discharged till he have paid the sum, or till the two months be expired. If there be no informer, it shall be wholly to the use of the poor; otherwise half to the informer, and half to the poor.

11 G.2. c.26.

By stat. 11 *G.*2. *c.*26. § 4. It shall be lawful for any justice of peace, upon information on oath against any person for hawking, selling, or exposing to sale spirituous liquors, contrary to 9 *G.*2. *c.*23. to issue his warrant to any constable, or other officer of the peace, for apprehending and bringing the offender before some justice of peace for the county or place where the offence shall have been committed.

§ 5. It shall be lawful for any person to seize and detain any person who shall hawk, sell, or expose to sale spirituous liquors, contrary to stat. 9 *G.*2. *c.*23., for such reasonable time as he may give notice to a constable, churchwarden, overseer of the poor, or some other peace or parish officer, who is hereby required to carry such offender before some justice of peace; and such justice is hereby required to proceed to the examination of such person in the same manner as if he had been brought before him by a constable or other officer of the peace; and the offender shall, upon conviction, be liable to the pains and penalties of stats. 9 *G.*2. *c.*23. and 10 *G.*2. *c.*17.

Feme covert may be convicted.

Rex v. *Crofts*, 2 *Str.* 1121. A woman was convicted for selling gin; and it appearing that she was a feme covert, it was objected that she could not be convicted; for as she could make no contract, it must be taken to be her husband's sale; or if she could be convicted, the husband ought to have been joined for conformity. It was answered, that where the crime is of such a nature as can be committed by her alone, she may be prosecuted without her husband; which being a proceeding grounded merely on the breach of the law, he shall not be included, unless privy. In this case there may be imprisonment and being kept to hard labour. And *per cur.* We think the conviction is right; for this is not like the cases that sound only in damages. The wife may be convicted for recusancy; and though she cannot have the benefit of the contract, yet she as well as the servant may do the act of vending. Besides, there would be a plain way to evade the act, if femes covert could not be convicted.

By stat. 11 *G.2. c.*26. § 1. If any less quantity than two gallons shall be sold or delivered in any clandestine manner to any person in any house, outhouse, stable, barn, or shed, or in other place, part of or belonging to any house or farm; in such case the occupier or occupiers (if more than one) consenting thereto, shall be deemed retailers, and forfeit 100*l.* as selling without licence. **11 G.2. c.26. Occupier of the house shall be liable.**

By stat. 9 *G.2. c.*23. § 16. If any person who shall sell wares, provisions, or other things by retail, shall give away spirituous liquors to any servant or apprentice coming to his shop or house to buy such things, under the pretence of his being a customer, or under any other pretence, such person shall be deemed a retailer of spirituous liquors, and shall be subject to the penalty. **9 G.2. c.23. Persons giving away spirituous liquors.**

§ 11. If any master, or other person, shall agree with any journeyman, workman, servant, or labourer, or other person employed by him or for him, to pay to him so much money for wages, and so much spirituous liquors, as together with the money shall amount to the value of the wages usually paid in like cases; or shall set off or deduct any part of the wages for any spirituous liquors, he shall be deemed a retailer, and forfeit 20*l.* over and above the other penalties, and such servant shall be entitled to his whole wages. **Paying wages in spirituous liquors.**

But by stats. 9 *G.2. c.*23. § 12. and 16 *G.2. c.*8. § 12. Nothing herein shall extend to physicians, apothecaries, surgeons, or chymists selling the same as medicines. **Apothecaries &c. selling spirituous liquors.**

By stat. 24 *G.2. c.*40. § 13. No licence shall be granted for retailing any spirituous liquors within any gaol, prison, house of correction, workhouse, or house of entertainment for any parish poor; and if any gaoler, keeper, or officer of any gaol, prison, or house of correction, or any governor, master, or officer of any workhouse or house for the entertainment of any parish poor, shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors or strong waters to be sold, used, lent, or given away in any such gaols, &c. or houses, or brought into the same, except such as shall be prescribed by the direction of a regular physician, surgeon, or apothecary from the shop of some regular apothecary; he shall forfeit 100*l.*, half to the king, and half (with full costs) to him who shall sue in the courts at *Westminster*. And if any such person shall offend again in like manner, and be a second time convicted, he shall forfeit his office. **24 G.2. c.40. Selling in gaols or workhouses.**

§ 14. Any justice, on information on oath that spirituous liquors or strong waters are kept and disposed of in any such gaol, &c. may enter and search, or empower by warrant any constable or other peace officer to search for and seize all such liquors as shall be found (except such as are directed to be used medicinally), and to cause the same to be forthwith staved and destroyed.

§ 15. If any person shall bring or endeavour to bring any liquors distilled, spirituous liquors (except in the way of medicine as before mentioned), into any such gaol, &c., the gaoler, &c. or his servants may apprehend and carry such offender before any justice of the peace, who shall hear and determine such offence in a summary way; and if by the oath of one witness, or otherwise, such person shall be convicted, he shall be committed to prison or to the house of correction, there to be kept for any time not exceeding three months, unless he shall immediately pay down such sum, not exceeding 20*l.* and not less than 10*l.*, as the justice shall

24 G.2. c.40. impose, to be paid half to the informer, and half to the poor of such gaol, &c. or workhouse.

§ 16. The gaoler, keeper, master, and chief officer, shall procure a copy of the three preceding clauses, to be printed or fairly written and hung up in one of the most public places of his gaol, house of correction, or workhouse aforesaid, and renew the same from time to time, so that it be always kept fair and legible, on pain of 40*s*. by warrant of one justice, on oath of one witness. Any justice may enter and demand a sight of it, and if it shall not be shewn to him hung up in some public place fair and legible, he shall immediately convict such person, and so from time to time as often as he shall think fit; half to be to the informer, and half (or the whole, if there be no informer) to the poor of such gaol or other place.

Recovering debt for spirituous liquors;

§ 12. No person shall recover any sum of money, debt, or demand on account of spirituous liquors, unless it shall *bonâ fide* have been contracted at one time to the amount of 20*s*. or upwards; nor shall any particular article in any account for distilled spirituous liquors be allowed, where the liquors delivered at one time shall not amount to the full value of 20*s*. at the least, and that without fraud or covin; and where no part of the liquors so sold shall have been returned or be agreed to be returned, directly or indirectly (*a*); and if any retailer, with or with-

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Intent of the statute.

(*a*) In an action for use and occupation of part of a house, and for goods sold and delivered, it appeared that the plaintiff was a liquor merchant, and the defendant took one side of a house belonging to him, the other side being occupied by one *Eaton*, who sold liquors on the account of the plaintiff. The defendant kept an eating-house, and the liquors consumed by the customers there were had from *Eaton* as they were wanted. Many of the items in the bill for liquors were under 20*s*. It was objected, that the plaintiff could not recover for those items; but Ld. *Kenyon* C.J. thought this case did not fall within the mischiefs intended to be remedied by this statute, the intent of which was to prohibit the sale of such small quantities to the *consumer*. This was done for the purpose of preventing the pernicious effects of dram drinking, which had been found extremely injurious to the lower orders of society. In the present case the liquors were not sold to the defendant for his own consumption, but for the use of the guests resorting to his house in the way of his trade, and therefore not within the statute. *Jackson* v. *Attrill*, *Peake's Rep*. 180.

In *assumpsit* for goods sold and delivered, it appeared that the defendant had run up a score for grog, beer, and herrings, consumed by him at a public-house kept by the plaintiff. It was objected, that the demand for the grog could not be sustained, being illegal within the stat. 24 *G*.2. *c*.40. § 12. *Thomson* B. was of this opinion, observing, however, that the statute was confined to spirituous liquors. The plaintiff recovered for the residue of his demand. *Gilpin* v. *Rendle*, *Devonshire Lent Ass*. 1809. 1 *Selw*. *N*. *P*. 61. See also *Spencer* v. *Smith*, 3 *Campb*. 9.

A plaintiff, in an action for a tavern bill, is not entitled to recover for any items under 20*s* fo spirits supplied to the guests such sales being prohibited by 24 G.2. c.40. § 12.

Burnyeat v. *Hutchinson*, *M*. 2 *G*.4. 5 *B*. & *A*. 241. *Assumpsit* for goods sold and delivered. Plea, general issue. At the trial at *Cumberland Sum*. *Ass*. 1821, before *Bayley* J. it appeared that the action was brought to recover the amount of a tavern bill, the charge for which amounted to 1*l*. 13*s*. There was also a charge for spirituous liquors supplied to the guests, amounting to 8*s*. To this charge it was objected, that it could not be recovered in consequence of stat. 24 *G*.2. *c*.40. § 12.; and *Gilpin* v. *Rendle* was cited. The learned judge was of this opinion, and the jury, under his direction, having found a verdict for 1*l*. 13*s*., he afterwards certified, in order to deprive the plaintiff of his costs. *D*. *F*. *Jones* now moved to increase the verdict to 41*s*. by adding the charge for spirituous liquors. Here the liquors were only incidental to the rest of the entertainment. The object of the statute was to prevent the sale to the consumers in small quantities, where spirits only were sold. It speaks of a collusion between the distiller and retailer in order to extend the sale. If this be the rule, as here laid down, any se-

out a licence, shall take any pawn by way of security for payment of any money for such spirituous liquors, or strong waters, he shall forfeit 40*s*. for every pawn or pledge so taken, to be levied by warrant of one justice, half to the poor, and half to the informer; and the owner shall have such remedy for recovering such pawn, or the value thereof, as if it had never been pledged.

24 G.2. c.40.

or taking a pledge for security.

§ 11. If any distiller or other person shall knowingly sell or deliver any distilled spirituous liquors, that the same may be unlawfully retailed, or to any unlicensed retailer, he shall forfeit 10*l*. and treble the value of the liquors, half to the king, and half to him that shall sue in the courts at *Westminster*. And if any person guilty of retailing such liquors shall discover the distiller or person who knowingly supplied him therewith, and prosecute him to conviction, he shall be entitled to his share of the penalty, and indemnified against all penalties incurred by him before that time for selling spirituous liquors without licence.

Distiller delivering to unlicensed retailers.

§ 28. If any persons, to the number of five or more, shall in a tumultuous and riotous manner assemble to rescue any offenders against any act relating to spirituous liquors, or for licensing the retailers thereof, or to assault or wound any person who shall have given, or be about to give, any information against, or shall have discovered, or given evidence against, or shall seize or bring to justice any offender, he, his aiders and abettors, shall be guilty of felony, and transported for seven years.

Riotously rescuing offenders, or assaulting informers.

By stat. 53 *G*.3. *c*.147. § 5. If any distiller in *England*, or any workman belonging to him, shall obstruct, molest, or hinder any officer of excise in the due execution of the powers granted by this act, the distiller shall forfeit 200*l*. See also stats. 43 *G*.3. *c*.115. § 6. — *c*.132. § 46. 46 *G*.3. *c*.102. § 43.

53 G.3. c.147. Obstructing officers.

By stat. 48 *G*.3. *c*.84. § 7. If any person shall offer for sale tea, brandy, rum, geneva, or other foreign spirits, tobacco or snuff, not being licensed to deal therein, and not having a permit for the same; or if any hawker, pedlar, petty chapman, or other trading person going from town to town, or to other men's houses, and trading on foot, or with horses or other cattle or otherwise, shall offer for sale any such goods, although he have a permit for the same, it shall be lawful for the person to whom the same shall be offered, to stop, arrest, and detain the person so offering, and to seize such goods, and to carry them to the next warehouse for the

48 G.3. c.84. Unlicensed persons offering for sale any spirits without permit, and hawkers, &c. so offering for sale spirits, &c. though they have permits, may be stopped and taken before a justice, &c.

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curity given for a tavern bill, in which there was a charge of a glass of spirits, would be invalid; and so, indeed, it was held in *Scott* v. *Gillmore*, 3 *Taunt*. 226., where the spirits were supplied to the party. But in *Spencer* v. *Smith*, 3 *Campb*. 9., where the bill was given by an officer for spirits supplied to recruits, Ld. *Ellenborough* C. J. was of a contrary opinion; and in *Jackson* v. *Attrill*, *Peake*, *N. P. C.* 180., where the spirits were supplied to the keeper of an eating-house, to be consumed by his customers, Ld. *Kenyon* C. J. held him liable. Here, the goods were supplied to other persons, and not to the defendant, who was not present at the entertainment. —— *Abbott* C. J. The words of the act are free from doubt. They contain a general and absolute prohibition of the sale of spirits, unless delivered in quantities amounting to *more than* 20*s*. *in value at one time*. We are, however, desired to narrow the construction, by introducing the qualifications of a sale to the consumer himself, and by confining it to the case where the spirits have been sold alone. But it would be a great evil to introduce such qualifications; and I think, if we did so, we should probably defeat the intention of the legislature. The verdict must remain as it is, with all its consequences. R. R.

48 G.3. c.84. customs or excise, and to carry the person before a justice of peace, who may require him to enter into recognizance, as directed in stat. 45 *G.3. c.*121., and he shall be subject to the provisions in the said act; and if the offender be a subject of H. M. and a seaman, and capable of serving in the navy, may send him to some officer of the impress service, to be dealt with according to stat. 47 *G.3. sess.* 2. *c.*66., or be by such justice committed to prison, and prosecuted for the penalties incurred for such offence; and such goods may be prosecuted in the name of the person who seized them, as if seized by an officer of customs or excise; and after condemnation of the goods, or commitment of the offender, the person who seized them shall be entitled to 5*l.*, if one moiety of the value fixed as in the said act shall not exceed that sum; and if a moiety shall exceed 5*l.*, then a moiety of such value, which the commissioners of customs and excise are to cause to be paid; and the person so arresting shall also be entitled to such further reward as is given to any officer or non-commissioned officer of the army, navy, or marines for arresting offenders.

24 G.2. c.40. Houses and places may be searched.

By stat. 24 *G.2. c.*40. § 10. The commissioners or one justice, on oath of any offence against this act, or any other act for regulating the retailing of spirituous liquors, may grant a warrant to any peace or parish officer, to enter and search the houses and other places where the offence shall be sworn to be committed, or in the occupation of the persons sworn to be guilty thereof; and they may break open the doors if they be not forthwith opened on demand, and seize all such distilled spirituous liquors as they shall there find, and detain the same till the offence shall be heard and determined; and if the offender be convicted, the liquors shall be forthwith staved; and if he be not convicted, the same shall be restored.

Officers neglecting to seize.

By stat. 6 *G.2. c.*17. § 10. When any officer of the customs shall neglect to seize and prosecute any vessel, boat, horses, or other cattle or carriage, forfeited for running brandy, and shall be convicted thereof on his appearance or default, by oath of one witness or confession, he shall forfeit 50*l.*

Constables neglecting their duty.

By stat. 11 *G.2. c.*26. § 7. If any constable, or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 *G.2.* or 10 *G.2.* herein mentioned, he shall, on conviction by the oath of one witness, forfeit 20*l.*

Power of the justices.

Penalties.

By stats. 24 *G.2. c.*40. § 29.—26 *G.3. c.*37. § 82.—27 *G.3. c.*13. § 38.—30 *G.3. c.*37. § 7.—30 *G.3. c.*38. § 9.—43 *G.3. c.*69. § 4. and *c.*81. § 17.—53 *G.3. c.*147. § 8.—58 *G.3. c.*28. § 5. All the penalties not herein otherwise directed shall be sued for and mitigated as by the laws of excise (*ante*, § II.) or in the courts at *Westminster;* and be half to the king, and half to the informer or prosecutor.

Reward where no penalty is levied.

And by stat. 17 *G.2. c.*17. § 20. Where the retailer is sent to the house of correction, the commissioners shall cause rewards, not exceeding 5*l.*, to be paid to the informers.

Limitation of actions.

By stat. 12 & 13 *W.3. c.*11. § 17. No information shall be brought against a distiller for any false or mis-entry, or offence, but within three months after the offence committed; and notice thereof shall be given to the party in writing, or left at his dwelling-house, within a week after laying the information.

Sale after condemnation.

By stat. 12 *G.1. c.*28. § 1. The commissioners shall cause all

foreign exciseable liquors seized for non-payment of duty, or for being prohibited to be imported, to be publicly sold, after condemnation, to the best bidder, at such places as they shall think proper. See also stats. 56 *G.3. c.*104. — 37 *G.3. c.*87.

By stats. 7 & 8 *W.3. c.* 30. § 13. and 28 *G.3. c.* 37. § 21. All stills, worms, and still heads, and other vessels and utensils for distilling, by whomsoever they shall be claimed, shall be liable to arrears. Utensils liable.

By stat. 24 *G.2. c.*40. § 17. The justices within the limits of the head office of excise in *London* shall once in every month transmit to the clerk of the peace a certificate of all persons convicted before them for any offences against this or any former act relating to spirituous liquors, or for licensing the retailers thereof, who shall keep and enter the same among the records of the court; which certificate shall be evidence upon any information relating to spirituous liquors. Conviction to be kept amongst the records of the sessions.

As to having spirits in possession not of a certain strength, *vide ante*, p. 282, 283.

Sect. IV. (17.) Starch, Hair Powder, and Stone Blue.

[10 Ann. c.26. — 12 Ann. st.2. c.9. — 1 G.1. st. 1. c.2. — 4 G.2. c.14. — 23 G.2. c.21. — 24 G.2. c.40. — 26 G.2. c.32. — 5 G.3. c.43. — 10 G.3. c.44. — 19 G.3. c.40. — 24 G.3. c.40. — sess. 2. c.41. — sess. 2. c.48. — 26 G.3. c.51. — 27 G.3. c.13. — c.31. — 28 G.3. c.37. — c.73. — 42 G.3. c.93. — 43 G.3. c.69. — 52 G.3. c.139. — 1 & 2 G.4. c.25. — 3 G.4. c.25. — c.27.]

By the 43 *G.3. c.*69. *Sched.* (A.) For every pound avoirdupois weight of *starch*, of what kind soever, which shall be made in *G.B.*, to be paid by the maker thereof, 3½*d.* 43 G.3. c.69. Duties.

And by stat. 59 *G.3. c.*52. table (A.) Upon every cwt. of *starch*, imported into *G.B.*, 9*l.* 10*s.* 59 G.3. c.52.

By stats. 23 *G.* 3. *c.* 77., 43 *G.* 3. *c.* 69., and 3 *G.* 4. *c.* 25. For every pound weight avoirdupois of starch made in *G.B.* which shall be consumed in *G.B.* on or before 15th *July*, 1826, in preparing and finishing any manufactures from flax or cotton, for sale, except such as shall be consumed in finishing new linen in the piece for sale, 1½*d.* Allowances.

For every pound weight avoirdupois of starch made in *G. B.* which shall be consumed in *G. B.* as aforesaid, in finishing new linen in the piece, for sale, 3*d.*

The allowances are to be paid to the manufacturer.

By stat. 1 & 2 *G.*4. *c.*29. § 1. The like allowances of duty on starch made in *G. B.*, used in the manufacturing of flax or cotton, or in finishing new linen in the piece, for sale, shall be allowed for starch made in *Ireland*, and imported into *G. B.* 1 & 2 G.4. c.29.

§ 4. Every article and commodity called *British* gum, or by any other name or description, being a preparation of or from starch, or of or from any of the materials from which starch is made in *G. B.*, or made in *Ireland*, and imported from thence into *G. B.*, shall be deemed starch, and liable to all the duties, allowances, &c. imposed and allowed upon starch, and to the several laws relating thereto. British gum to be deemed starch.

By stats. 19 *G.3. c.*40. § 1., and 26 *G.3. c.*51. § 20. No person, within the limits of the head office of excise in *London*, shall be a maker of starch, unless he occupies a tenement of 10*l.* a-year or Who may be a maker of starch.

19 G.3. c.40. 26 G.3. c.51. upwards, and for which he shall be assessed in his own name, and also pay to the parish rates; and elsewhere, unless he pay to church and poor; and where there are no rates to church and poor, then to the rates on houses and windows, on the like penalties as for making starch without entry.

24 G.3. sess.2. c.41. Starch-makers to be licensed. By stat. 24 *G.3. sess.* 2. *c.*41. § 1. 6, 7. Every maker of starch for sale shall take out a licence annually, under the penalty of 30*l.*, for which licence he shall pay 5*l.* by stat. 43 *G.3. c.*69. *Sched.* (A.) and by stat. 55 *G.3. c.*30. (continued by stat. 3 *G.4. c.* 27. until 5th *July*, 1826) 5*l.* additional.—Total 10*l.*

Persons in partnership. But by stat. 24 *G.3. sess.* 2. *c.*41. § 8. Persons in partnership need only take out one licence for one house.

53 G.3. c.103. Transfer of licence. And by stat. 53 *G.3. c.*103. Upon the death of any person licensed, or upon the removal of any person from the house or premises in which his licence shall authorize him to make or manufacture, deal in, vend, or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorize the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted.

24 G.3. sess.2. c.48. Places of making to be entered. By stat. 24 *G.3. sess.* 2. *c.*48. § 1. No maker of starch shall erect, set up, alter, change, enlarge, or make use of any workhouse, storehouse, room, or other place for the making, drying, or keeping of starch, or for keeping any flour or meal, or other materials, proper to be made into starch, or use any vat, trough, kiln, stove, box, utensil, or other vessel for the making of starch, without first giving notice in writing thereof, and of his name or place of abode, (unless such notice has been before given), at the next office for the said duties. And if such maker shall make default herein, he shall, for each offence, forfeit 200*l.*

5 G.3. c.43. Summoning offenders. By stat. 5 *G.3. c.*43. § 19. A summons left at the place where discovery shall be made of such offence for using any workhouse, &c. without making entries, directed to the person prosecuted by his right or assumed name, shall be as effectual as if delivered personally, and directed to him by his proper name.

19 G.3. c.40. Rooms and vessels to be numbered. By stat. 19 *G.3. c.*40. § 12. All rooms and places, vessels and utensils, shall be marked and numbered, at the discretion of the surveyor or supervisor, at the expence of the maker, on the penalty of 50*l.*

10 Ann. c.26. By stat. 10 *Ann. c.*26. § 14. All flour, meal, and other materials for making starch, found in any private workhouse or other place, and all private utensils and vessels for making or keeping starch, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof.

24 G.3. sess.2. Names, &c. to be put up. By stat. 24 *G.3. sess.* 2. *c.*48. § 3. Every starch-maker shall cause his *name* to be painted in large letters, of at least three inches in length, and shall put the same over the outward door, or in some conspicuous part of the front of his starch-house, with the addition of the word *starch-maker*, on penalty of 100*l.*

10 Ann. c.26. Officers to enter and survey. And by stat. 10 *Ann. c.* 26. § 14. The officer shall at all times, by day or night, and if in the night with a constable or other peace officer, be permitted on request to enter the house, workhouse, warehouse, or other place used by any maker of starch;

and by gauging or weighing the starch, and gauging the boxes and other utensils, or otherwise, to take an account of the quantity; and thereof shall make return in writing to the commissioners, leaving a true copy, if demanded, under his hand, with the maker; and if be shall not leave such copy (after demanded in writing, stat. 12 *G. c.*28. § 30.), he shall forfeit 40*s*. 10 An. c.26.

By stat. 19 *G*.3. *c*.40. § 6. Every maker, before he begins to empty or wash out any of the vats by him used in preparing or making of starch, shall give to the officer 12 hours' notice if within the bills, elsewhere 24 hours, of the particular time and hour when he intends to begin; and if he shall not begin at the hour, or within two hours after, the notice shall be void. And if he shall begin without giving such notice, he shall forfeit 100*l*. 19 G.3. c.40. Notice of emptying the vats.

By stat. 26 *G*.3. *c*.51. § 15. He shall, (on the like pain) after he has begun to empty or wash out such vats, proceed and continue to empty or wash out the same without leaving off, (except for one night,) and shall finish the same within 48 hours from the time of beginning. 26 G.3. c.51.

And by stat. 19 *G*.3. *c*.40. § 7. 9. When the vats shall be emptied, and the water put into the frames or tubs, or other utensils, the said water shall remain therein undisturbed for 48 hours at least, and during that time the slimes and wash shall not be taken off the same, on pain that the maker shall forfeit 100*l*. 19 G.3. c.40.

By stat. 26 *G*.3. *c*.51. § 18. If the maker, whilst the starch is in operation and under water, mix any of the starch-waters of one making with those of another making, although in the presence of an officer, he shall forfeit 100*l*.; but slimes which have been entered as such, for the space of 24 hours may be mixed in the presence of an officer. 26 G.3. c.51. Mixing whilst in operation.

By stat. 19 *G*.3. *c*.40. § 8. When the maker shall be desirous to take off from the sour waters the slimes or wash so put into the frames or tubs, after the same shall have remained undisturbed for 48 hours, he shall give the officer 12 hours notice within the bills, (elsewhere 24 hours,) of the particular time and hour when he intends to take off such slimes and wash; and if he shall not begin at the time, or within two hours after, the notice shall be void. And if he shall begin without giving such notice, he shall forfeit 100*l*. 19 G.3. c.40. Notice of taking the waters out of the tubs.

And by stat. 26 *G*.3. *c*.51. § 15. He shall (on the like pain,) after he has begun to take off the slimes or wash from the sour waters, continue to shift the said sour waters until the whole is finished, and shall finish the same within 12 hours from the time of beginning. 26 G.3. c.51.

§ 16. When the taking off the slime and wash from the sour waters is finished, and the green waters shall be put into the tubs or other utensils, they shall remain undisturbed for 24 hours; and that the officers may be able to ascertain when the said green waters were put into the tubs, every maker shall give notice in writing to the officer of the time he finished shifting such sour waters; on pain of 100*l*. in either case.

By stat. 19 *G*.3. *c*.40. § 9. When the slime shall be taken off, and put into a tub or other utensil, the same shall remain therein for 24 hours; on pain that the maker shall forfeit 100*l*. 19 G.3. c.40.

By stat. 4 *G*.2. *c*.14. § 1. All makers of starch shall use regular Boxes.

4 G.2. c.14. square or oblong boxes only, for boxing and draining his green starch, before it is dried in the stove; on pain of 10*l.*

4 G.2. c.14. 19 G.3. c.40. And by stats. 4 *G.*2. *c.*14. § 1. and 19 *G.*3. *c.*40. § 11. Every maker shall, if within the bills, give 12 hours, elsewhere 24 hours, notice in writing to the officer, of his intention to put any green starch into such boxes; and he shall, in such notice, express the particular frame or tub from which he intends to box any starch; and when he shall begin to box, he shall continue to proceed to box the same, till the whole quantity in such frame or tub shall be boxed; and if he shall neglect to give such notice, or shall not proceed or continue after such notice given; he shall forfeit 200*l.*

1 G.1. st.1. c.2. By stat. 1 *G.*1. *st.*1. *c.*2. § 6. If the charge be made by gauging it before it be dried in the stove, then every box of green starch, or starch before it be dried, containing 57 inches in length and 10 inches in breadth, and eight inches in depth, or in the whole 4560 solid inches, shall be esteemed 131 pounds avoirdupois of starch dried, and perfectly made.

19 G.3. c.40. By stat. 19 *G.* 3. *c.*40. § 10. If the officer shall miss any quantity of starch, of which an account had been taken by gauge, whilst the same was in the sour waters or slimes, and before put into the boxes, he may charge the maker according to such gauge taken.

Drying in the stove. § 13, 14, 15. When the maker shall have broken the starch from his boxes, he shall deliver to the officer an account in writing of the true number of pieces broken from such box, distinguishing the size of the different pieces, under the denominations of large, middling, and small; and how many pieces of each denomination are contained in each breaking from the boxes. And when any maker shall put his starch, when scraped, or when put into papers into the stove for drying, he shall place the pieces in such manner as that the officers may have access to and be able to count the same. And he shall provide ladders, and assist the officer in taking an account of the said several pieces in the stove; and he shall not, for two hours after the officer hath entered the stove, stir the fire under the stove, nor throw upon the pan of such stove any dirt, meal, or other ingredient, whereby a smoke may be raised, or the officer hindered in counting the pieces. And if any maker shall offend in any of the premises, he shall forfeit 200*l.*

Breaking down into scrapings. § 16. When any maker intends to break down any piece, into scrapings or otherwise, he shall give to the officer 12 hours notice if within the bills, elsewhere 24 hours, of the particular time and hour when he intends to break down such pieces; and if he shall not begin at the time, or within two hours after, the notice shall be void. And if he shall begin without giving such notice, he shall forfeit 100*l.*

26 G.3. c.51. Removing from the stove. By stat. 26 *G.* 3. *c.*51. § 19. If he be desirous to remove such starch from the stove, he shall give the like notice; and if he shall begin to remove any starch from the stove after the same is dried, without giving such notice, he shall forfeit 200*l.*

19 G.3. c.40. By stat. 19 *G.* 3. *c.*40. § 17. If the officer shall find any piece of starch drying of which no account had been taken in the box, the same shall be deemed starch whereof no account had been taken, and the maker shall forfeit 100*l.*

26 G.3. c.51. To be papered and stamped. By stat. 26 *G.* 3. *c.*51. § 1, 2. All starch before it be put into any stove or place to dry, (except for crusting,) shall be put in

papers, and the maker shall, before he begins papering such starch for drying, give to the officer 12 hours notice in writing if within the bills, elsewhere 24 hours, of the particular time and hour when he intends to begin, and shall in such notice express the number of pieces intended to be papered, and where intended to be dried; and if he shall not begin to paper such starch at the time or within one hour, such notice shall be void. And every piece of starch, when papered shall be tied up with strings, crossing each other on that side of the piece where the ends shall be folded, and there shall be pasted thereon a label or piece of thin paper three inches long, and three inches broad at least, of a different colour, upon which the officer shall put a stamp or seal, in such manner as to prevent opening such paper of starch without tearing the said piece of stamped paper: And every maker offending herein shall forfeit 100*l*. 26 G.3. c.51.

Forging or using forged stamps.

By § 14. If any person shall forge or counterfeit any such stamp, or seal, or the impression of the same on the papers, he shall be guilty of felony without benefit of clergy (*a*); or shall knowingly sell any starch with such forged or counterfeit stamp, or seal, or impression, or affix any paper duly stamped to any piece of starch other than that which was originally inclosed therein; he shall forfeit 500*l*.

Damaged stamps may be replaced.

§ 11. When the paper wherein such starch is contained shall be broken or damaged, and the maker shall be desirous of having the same repapered and restamped, he shall give (if within the bills 12 hours, elsewhere 24 hours) notice to the officer, who, on being satisfied that it was damaged by accident, may restamp the same as before.

Starch unstamped and scrapings.

§ 3. If any piece of starch papered and not stamped, or any piece not papered in manner as aforesaid, or any scrapings or loose starch shall be found in any stove or place for drying, the same shall be forfeited; and the maker in whose possession the same is found shall forfeit 200*l*. But this shall not extend to pieces of starch put into the stove for crusting.

§ 9, 10. Within one hour after such starch shall have been papered and stamped, all scrapings belonging thereto shall be weighed and taken account of and put into water, and shall not be mixed with other starch, or preparation for making starch then in operation, and when dissolved shall be strained through a sieve, and the officer shall take an account thereof as a green water; and the same shall not be again meddled with, until notice shall be given for boxing the same, as required by 4 *G.* 2. *c.*14. and 19 *G.*3. *c.* 40. And if any maker shall neglect to put such scrapings under water, and stir the same until dissolved, and strain the same within one hour after having been weighed and taken account of; or shall wilfully disturb or cause the same to be taken away without notice, he shall be deemed to have boxed starch without notice: or if he shall, in order to increase the quantity of scrapings before the same

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(*a*) But by stat. 52 *G.*3. *c.*143. § 1. in all cases where any act committed in breach of, or in resistance to any of the laws for collecting the revenue, would by the laws in force subject the offender to suffer death, as guilty of felony without benefit of clergy, such act shall be deemed to be felony with benefit of clergy, and punishable only as such, unless the same shall also be declared felony without benefit of clergy by this act. *Ante*, p.42.

26 G. 3. c. 51. be weighed, mix starch of the same or any other making, or any flour, meal, or other thing with such scrapings, or wilfully cause any water or other liquid to be put to such scrapings, or by any means cause the same to be increased in weight, he shall forfeit 200*l.*

10 Ann. c. 26. Maker to keep scales and weights. By stat. 10 *Ann. c.* 26. § 16. Every maker of starch shall keep sufficient and just scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof; on pain of 10*l.*

10 G. 3. c. 44. And by stat. 10 *G.* 3. *c.* 44. § 1. If he shall use insufficient scales or weights, he shall forfeit 100*l.*; but not to be prosecuted

28 G. 3. c. 37. both on this and the former act. And by stat. 28 *G.* 3. *c.* 37. § 15. The same shall be forfeited, and may be seized by any officer.

10 Ann. c. 26. Removing before surveyed. By stat. 10 *Ann. c.* 26. § 19. No maker of starch shall remove any starch of which no account hath been taken by the officer from the place where it was made, without giving to the officer within the bills 24 hours notice, and elsewhere two days notice.

19 G. 3. c. 40. By stat. 19 *G.* 3. *c.* 40. § 19. If he shall remove any starch after it is dried out of the stove or drying place before it has been weighed and taken account of by the officers; he shall forfeit 200*l.*

24 G. 3. sess. 2. c. 48. Removing upwards of 28lbs. By stat. 24 *G.* 3. *sess.* 2. *c.* 48. § 4. No starch exceeding 28lb. shall be removed or carried by land or water, unless the word *starch* be painted or marked on the package in legible letters three inches long, on pain of forfeiture thereof, together with the chests, casks, sacks, or other package containing the same; and the boat or vessel, horses or other cattle, carts or other carriages, made use of in removing thereof.

Dealers receiving above 28lbs. § 5. If any dealer in starch shall receive any quantity exceeding 28lb. of starch, not marked as aforesaid, he shall forfeit 200*l.*

26 G. 3. c. 51. Loose starch above 28lbs. and scrapings may be seized. By stat. 26 *G.* 3. *c.* 51. § 13. All starch not being papered and stamped as before directed, and all loose starch exceeding 28lb., and scrapings of starch, which shall be found in the possession of any maker of (or *dealer* in, 27 *G.* 3. *c.* 31. § 23.) starch, or any person for his use, or shall be found removing by land or water, shall be forfeited, and may be seized by any officer of the said duties; together with the package containing the same, and the boat or vessel, horses or other cattle, carts or other carriages, made use of in removing thereof; and such person shall forfeit moreover 10*s.* for every pound. But not to extend to starch made into hair powder, or to any quantity taken out of the papers in the possession of any hair powder maker, or blue maker, or to any quantity not exceeding 28lb. in the possession of any dealer in starch; nor to the returns from the sieves that may be in the possession of any maker of hair powder.

4 G. 2. c. 14. 23 G. 2. c. 21. Concealing or privately making. By stats. 4 *G.* 2. *c.* 14. § 4. and 23 *G.* 2. *c.* 21. § 34. If any officer of the duties upon starch or of the customs, shall have any cause to suspect that starch is privately making in any place, or hid or concealed with intent to defraud the duties, then, upon oath made before any commissioner or justice residing near, setting forth the ground of his suspicion, such commissioner or justice may issue his warrant to authorize such officer by day or night, (but if in the night in presence of a constable or other peace officer) to enter such suspected place, and seize and carry away the same, with the materials, as forfeited, together with the boxes and other

things containing it; and unless the party make it appear that the duty has been paid, he shall forfeit 50*l.*; and if any person obstruct the officer, he shall forfeit 100*l.*

By stat. 19 *G.* 3. c. 40. § 20. If any maker shall fraudulently conceal any starch, he shall forfeit 100*l.* 19 G.3. c.40.

By stat. 24 *G.* 3. *sess.* 2. *c.* 48. § 2. When any officer of excise shall discover that the making of starch is carried on in any private workhouse, and without notice given, and at the same time discover that any person shall knowingly assist in making starch in any private or unentered place, or shall be anyways concerned in carrying on such private making of starch, every person so offending shall forfeit 30*l.* over and above all penalties that the proprietor may be liable to. And any officer of excise and all other persons acting in his aid may arrest and convey him before a justice, who, on confession or proof on oath of one witness, may convict such offender, who shall immediately pay the said penalty, and on his refusing or neglecting to pay the same he shall be committed to the house of correction for six months, to be reckoned from the day of conviction, unless the penalty shall be sooner paid. And on conviction for a second offence, he shall forfeit 60*l.*, and on non-payment shall be committed in like manner for one year, unless the same be sooner paid. 24 G.3. sess. 2. c.48. Assisting in private or unentered places.

By stat. 10 *Ann.* *c.* 26. § 17. The officer shall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an account of the last time he was there, and shall not on reasonable demand receive satisfaction what is become thereof, he may charge the maker with such quantity of starch as such materials so missing in his judgment would reasonably have made, not exceeding 25 pounds weight of starch for every bushel of such ingredients. 10 Ann. c.26. Officer to charge for materials missing.

By stat. 26 *G.* 3. *c.* 51. § 17. If any officer shall miss any starch, or materials for making thereof, of which a gauge had been taken while in the green water or slimes, and before put into the boxes, and shall not receive satisfaction what is become of the same, he shall charge the maker according to the gauge so taken, and such maker shall pay the duty so charged. 26 G.3. c.51.

By stat. 10 *Ann.* *c.* 26. § 20. All makers shall keep all starch that hath not been taken account of by the officer, separate from such as hath, for 24 hours after making, within the bills, and for two days in any other part of *G. B.*, unless sooner taken account of, on pain of forfeiting 5*l.* 10 Ann. c.26. Starch unsurveyed to be kept separate.

(*a*) By stat. 19 *G.* 3. *c.* 40. § 3. Every maker of starch shall weekly make a true entry in writing at the next office, of all the starch by him made within each week, setting forth the weight, and how much was made at each time, on pain of 50*l.*: which entry shall be on oath of the maker, or his chief workman, according to the best of his knowledge and belief, before such officer as shall 19 G.3. c.40. Entry of starch made.

(*a*) By stat. 19 *G.* 3. *c.* 40. § 2. §§ 11 & 13 of 10 *Ann.* *c.* 26. respecting makers of starch making entry of the starch made by them and paying the duties within certain times, are repealed.

be appointed by the commissioners within the bills of mortality, and elsewhere before the collector and supervisor.

By stats. 10 *Ann.* *c.* 26. § 12. 19 *G.* 3. *c.* 40. § 5. No maker shall be obliged to go further, either to make entry or payment, than to the next market town.

19 G.3. c.40. Payment of the duties.

By stat. 19 *G.* 3. *c.* 40. § 4. Every maker of starch shall, within one week after such entry, pay off the duties on pain of double duty: And no maker, after default in payment, shall sell or deliver out any starch until he hath paid off the duty; on pain of double the value of such starch.

23 G.2. c.21. Carrying coastwise.

By stat. 23 *G.* 2. *c.* 21. § 29. Cockets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocket, it shall be forfeited and seized, together with the package.

Importation and exportation.

By the same stat. § 27. & 42 *G.* 3. *c.* 93. § 19. No starch shall be *imported* otherwise than in some package, containing at least 224 pounds of neat starch, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50*l.* (*a*)

26 G.2. c.32.

But by stat. 26 *G.* 2. *c.* 32. § 8. On information brought against such master, (referring to 23 *G.* 2. *c.* 21. § 29.) he may detain the wages of the mariners till it be determined; and if it shall appear that the starch was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture.

Officers of excise may go on board vessels.

By stat. 23 *G.* 2. *c.* 21. § 28. The officers of excise (in like manner as the officers of the customs) may go on board any vessel, within the limits of any port, and search for and seize all starch forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped.

26 G.3. c.51. Every paper of starch for exportation to have a label put thereon.

By stat. 26 *G.* 3. *c.* 51. § 5. 7, 8. When any starch maker or dealer who shall intend to export any starch upon which all the duties have been paid, and shall have given notice of packing up the same as directed by stat. 25 *G.* 3. *c.* 74. the officer who shall attend to see the said starch packed up shall mark every paper of starch, on a label or piece of paper to be affixed thereto, with the word *Exportation*, but the same shall not be permitted to be packed up or exported, unless it shall have the piece of paper stamped, as by this act directed, entire and unbroken. And if any starch so marked for exportation shall be found upon land, (except where packed up before shipped, or in removing from thence to be put on board,) the same shall be forfeited, and may be seized by any officer of excise or customs.

4 G.2. c.14. Officers may seize suspected starch.

By stat. 4 *G.* 2. *c.* 14. § 3. Any officer of excise or customs may seize any starch or hair powder, with the horses and package, that shall be found in any ship or vessel, or shall be carrying in any cart or waggon or other carriage, where he has good reason to suspect that it hath been privately made, or imported without pay-

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(*a*) Vide *ante*, this tit., *Candles*, p. 120.

ment of duty, or relanded after drawback; and shall in ten days exhibit an information before three commissioners of excise, or two justices residing near the place where the seizure is made; and if the party does not make it appear that the duty hath been paid, it shall be forfeited, together with the horses and package; and the offender shall likewise forfeit *5l.* for every hundred weight. 4 G.2. c.14. Penalty.

And by stat. 23 *G.* 2. *c.* 21. § 30. the said officers may seize any starch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported, or relanded after drawback; and if the party at the hearing of the information shall not make it appear that the duty hath been paid or secured, he shall forfeit *5l.* for every hundred pounds weight, and so in proportion, and the goods and package also shall be forfeited. 23 G.2. c.21.

By stat. 42 *G.* 3. *c.* 93. § 18. Where goods shall be forfeited under any act relating to the excise, the packages containing the same, and the vessel, boat, cart, carriage, and cattle used in the removal thereof, shall be forfeited, and may be seized by any officer of excise. When goods are forfeited by any excise law, carriage, &c. also forfeited.

By stat. 23 *G.* 2. *c.* 21. § 31. If any foreign starch shall be unshipped with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation on debenture; the same, together with the package, vessels, boats, horses, and other cattle and carriages used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forfeit *5l.* for every hundred pounds weight; and so in proportion. Foreign starch unshipped before entry or relanded.

§ 32. If any person shall knowingly harbour, keep, or conceal, or knowingly permit to be kept, harboured, &c. any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claim any property therein or not, forfeit *50l.* for every hundred pounds weight, and so in proportion, together with the goods and package. Persons harbouring starch unlawfully imported.

§ 33. Where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it be within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it be out of the said limits, then public notice shall be given by proclamation at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof; and the judgment thereon shall not be liable to appeal, nor be removed by *certiorari*. Not appearing to claim within 20 days.

By stat. 1 & 2 *G.* 4. *c.* 29. § 2. All persons intending to export any starch made in *Ireland*, to *G. B.*, shall, six hours before they shall ship the same, give to the proper officer of the customs in *Ireland* a notice thereof in writing, specifying the number of boxes or packages, and also the number of pieces or parcels, and net weight of the starch contained in each such boxes or other package, with the marks and numbers and the tare thereof, (every such external package having the word *Starch* permanently marked 1&2G.4. c.29. Notice to be given of intention to export starch from Ireland, specifying number of packages and weight, &c.

1 & 2 G. 4. c. 29.

Package not to be less than 242 lbs. and the starch to be in parcels, tied up in the manner herein mentioned.

on the outside thereof in distinct letters of two inches in length at the least, and containing at the least 224 pounds net avoirdupois of such starch, and the starch therein being in pieces or parcels, and each piece or parcel enclosed in a separate paper, tied up with string, the ends of which shall cross each other on that side of the piece or parcel where the ends of the paper are folded,) and also specifying in such notice the quay or place where such goods are lying, and from which they are intended to be shipped, and the time when such shipment is intended to take place, and the name of the ship or vessel, and of the master or commander thereof, and of the particular port or place in *G. B.* to which such goods are intended to be exported; and such officer shall, upon the receipt of such notice, and the production of such goods, take an account of such starch, and of the marks and numbers of each of such boxes or other external packages, and shall ascertain the gross weight of each of such boxes or other external packages of starch, and compare the same with the particulars expressed in such notice; and the shipper or exporter shall thereupon nail, screw, or fasten down each of such boxes or other external packages; and before shipping the same, enter into bond with sufficient sureties, to be approved of by the proper collector of the customs in *Ireland*, in a penalty calculated at the rate of 7*d.* *British* currency, for every pound weight avoirdupois of the starch mentioned in such bond, with a condition, that such starch shall be shipped and exported as aforesaid; and shall not be unshipped, unladed, or laid on land, or put on board any other ship or vessel in *G. B.* (except in case of shipwreck or other unavoidable accident); which bond the collector of the customs is hereby directed to take in H. M.'s name, and to H. M.'s use; and shall without fee, after the boxes or packages have been seen and inspected on board of such ship, deliver a certificate of such shipment, describing the number of boxes or packages, with the marks and numbers, and the number of pieces or parcels of starch papered and tied up contained therein, together with the tare of each such box or package, and the net weight of the starch therein contained; and also the date of such shipment and bond, with the name of the ship, and of the master or commander thereof, and the port or place in *Ireland* at which shipped and from which exported, and the port or place in *G. B.* to which the same is intended to be exported, according to the particulars contained in such bond; and shall thereupon deliver such certificate to such master or commander, to accompany the goods on the said voyage, and shall transmit a duplicate of such certificate by the post, at the expence of the shipper, to the inspector or port surveyor of excise of the port or place in *G. B.* mentioned in such certificate; and upon the arrival of such ship or vessel at such port or place, or from necessity at any other port or place in *G. B.*, such master or commander shall shew the same to every officer of excise who shall board the said ship or vessel and demand the inspection of such certificate; and shall deliver such certificate to the proper inspector or port surveyor of excise at the port or place in *G. B.* of such importation; and upon entry of such goods being made at such port or place, for payment of the duties payable thereon, the inspector, surveyor, or officer of excise appointed for that purpose, shall open every such box or package, and weigh

Officers to take an account of such starch.

Bond to be given for the due exportation.

Certificate of shipping to be given by the proper officer to the master of the vessel, and a duplicate sent to the surveyor of the port of importation.

On arrival of vessel certificate to be produced, and on entry of goods, and the officer being satisfied as to the legal importation, a certificate thereof shall be transmitted to Ire-

and compare the contents thereof with such certificate, and if he deem it necessary, open the ends of the paper in which each piece or parcel of starch is enclosed and tied up, so as to satisfy himself that the same contains only starch made in *Ireland;* and if upon such weighing and examination he shall find the same to agree with the particulars specified in such certificate, and to be a fair and legal importation, he shall forthwith, after the duties payable on the importation of such starch shall be fully paid, make out and deliver to the master or commander of such ship or vessel a certificate of the due importation, landing, and examination of, and payment of duty on such starch, and shall, at the expence of the importer, transmit by post a duplicate of such last-mentioned certificate to the collector of the customs of the port or place in *Ireland* from which such starch was shipped; who, upon the receipt of such certificate, is, after comparing the same with such bond as aforesaid, to cancel such bond, if such certificate and bond are found to correspond and agree; and such importer is, after the delivery of such certificate, at his own expence, but in the presence of the proper officer of excise, strongly to affix with warm paste made with glue, on every piece or parcel of starch so papered and tied up, a label of thin paper, three inches long and three inches broad at the least, of a different colour to that in which the starch is wrapped; *viz.* if the starch is wrapped in blue or brown paper, the label shall be white; and if wrapped in white paper, the label shall be blue; and such label shall be affixed on that side of the piece of starch where the ends of the paper shall be folded, and in such manner as to prevent the opening thereof without tearing the label; and the proper officer shall thereupon stamp every label on every piece or parcel of such starch, with such stamp as shall be directed by the commissioners of excise.

1 & 2 G.4. c.29.

land, that the bond may be cancelled.

Starch so imported shall be labelled and stamped as herein directed.

§ 3. If upon the proper officer of the customs in *Ireland* taking an account of and weighing any packages of starch produced to him as the goods specified in any such notice as aforesaid, shall discover the same not to agree with the particulars specified in such notice, or not according to the provisions of this act, every such notice shall be void, and the person and persons giving such notice shall forfeit the sum of 20*l.* *British* currency, to be recoverered and applied as any other penalty by any law relating to H. M.'s customs in *Ireland;* and if any starch, for which any such bond shall be given as aforesaid, for the due shipment and exportation thereof to *G. B.*, shall not be landed in *G. B.* (shipwreck and other unavoidable accident excepted), and the duty payable thereon paid, and for which such a certificate thereof as is hereinbefore mentioned, shall not be delivered to the proper collector of customs in *Ireland* within three calendar months after the date of such bond, the penalty of such bond shall be forfeited; and if any starch made in *Ireland* shall, after the expiration of one month after the passing of this act, be shipped in *Ireland* and imported into *G. B.* otherwise than as aforesaid, or without such *Irish* certificate as is hereinbefore provided for that purpose; or not agreeing therewith in the weight, quality, and description of the goods or packages therein specified, or for which such certificate is not received or delivered at the time of importation, or which is not duly entered, and the duties paid thereon; or on any piece or parcel of which the importer thereof

Notice to be void if packages do not agree in the particulars therein specified; and the person giving notice shall forfeit 20*l.*

If starch be not landed in G. B. (unavoidable accident excepted) and duty paid, &c. within three months, bond shall be forfeited.

If regulations as to exportation and importation be not complied with, starch shall be forfeited.

1 & 2 G.4. c.29.

refuses or neglects to affix such label as aforesaid; or of which any piece or parcel shall be removed or concealed from the proper officer, before the same has been marked or stamped thereon by such officer to denote the charge of duty, all such starch, with the packages containing the same, shall be forfeited, and shall be seized by any officer of excise; and if any package shall be imported as aforesaid as starch made in *Ireland*, which shall contain any foreign starch, or any other goods or commodity than starch made in *Ireland*, all such goods and packages shall be forfeited, and may be seized by any officer of excise; and the importer thereof, and every person concerned therein, shall over and above such forfeiture forfeit the sum of 100*l.*, or treble the value of such goods and packages, at the election of H. M.'s attorney-general, to be recovered, paid, and applied as any other penalty by any law relating to excise in *G. B.*

If packages imported as starch made in Ireland contain foreign starch or other goods, the same shall be forfeited, and the importer shall also forfeit 100*l.* or treble the value.

Makers and sellers of hair powder.

By stat. 12 *Ann. st.* 2. *c.* 9. § 20. No perfumer, peruke maker, barber, or dealer in *hair powder*, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talke, plaister of Paris, whiting, lime, or other thing of the like nature, (sweet scents only excepted,) on pain of forfeiting the same, and 50*l.*

4 G.2. c.14.

By stat. 4 *G.* 2. *c.* 14. § 5. If any maker of *hair powder*, or other such person, shall mix any powder or alabaster, plaister of Paris, talk, chalk, whiting, lime, or any other material, (rice first made into starch, and sweet scents only excepted,) with any starch or powder of starch to be made use of for making of hair powder, and shall make any hair powder with any of the said materials, or any other materials (except starch or powder of starch, or of rice first made into starch,) and shall use, sell, or offer to sell any hair powder so mixed or made; he shall forfeit the hair powder so mixed and 20*l.*

Places of making hair powder to be entered.

§ 6. Every maker of *hair powder* shall make entry in writing at the next excise office of his place of abode, and of his workhouse or other place made use of for making hair powder; on pain of 20*l.*

Officer to enter the same and survey.

§ 7. The officer, in the day time, on his request, may enter places used for making *hair powder*, and the shops of perfumers, peruke makers, barbers, and other sellers or dealers in hair powder, and examine the same, and carry away samples, paying a reasonable price for the same.

§ 9. And if such starch maker, or dealer, shall not on request suffer him to enter and examine, and take samples (on offering to pay the common price); he shall forfeit 20*l.*

Persons having in their possession materials for adulterating hair powder.

§ 8. If any starch maker, or dealer in hair powder, shall have in his possession for making, mixing, or counterfeiting hair powder any alabaster, plaister of Paris, talk, chalk, whiting, lime, or other material besides starch, or powder of starch, or of rice first made into starch, for the making, mixing, or counterfeiting of hair powder, he shall forfeit the same, and 10*l.*

26 G.3. c.51. Makers of stone blue.

By stat. 26 *G.* 3. *c.* 51. § 21. Every maker of *stone blue* for sale shall make an entry in writing at the next excise office of his name and place of abode, together with the workshop or place that shall be made use of in making or keeping stone blue, or materials for making thereof; on the penalty of 50*l.*

§ 22. 25, 26. Any officer by day upon request may enter such workshop or place, and examine every parcel of stone blue, and take samples thereof, paying a reasonable price for the same; and

if any person shall refuse to permit him to enter such place, or hinder him in taking such samples, or shall assault, molest, or hinder any officer in the execution of this act, he shall forfeit 50*l*. 26 G.3. c.51.

§ 23. No maker shall begin to make any stone blue for sale from any flour, meal, or other ingredients, (other than for colouring the same) except starch for which the duties have been paid, on pain of forfeiting thereof, (except such colouring,) together with the boxes, tubs, &c. containing the same, and also 100*l*.

No starch to be received by stone blue makers but in stamped papers.

§ 24. If any maker of stone blue or hair powder for sale, shall receive into his possession any starch in papers not stamped, or any loose starch or scrapings, he shall forfeit 10*s*. a pound; and such starch and scrapings shall be forfeited, and may be seized by any officer. And if any maker of stone blue or hair powder shall keep above 28 lbs. of starch or hair powder in any unentered place, the same shall be forfeited, and also 50*l*.

Power of the justices.

All the said forfeitures shall be sued for, levied, and mitigated, as by the laws of excise (*a*), or in the courts at *Westminster;* and be distributed half to the king, and half (and by the 10 *Ann. c.*26. half with full costs) to the prosecutor. Vide 10 *Ann. c.* 26. § 29. — 23 *G.* 2. *c.* 21. § 27. — 24 *G.* 2. *c.* 40. § 29. — 19 *G.* 3. *c.* 40. § 22. — 24 *G.* 3. *c.* 48. § 16. — 26 *G.* 3. *c.* 51. § 26. — 43 *G.* 3. *c.* 69. § 4.

Obstructing officer.

By stat. 24 *G.* 3. *c.* 48. § 6. If the maker shall obstruct such officer in the execution of his duty, he shall forfeit 100*l*.

23 G.2. c.21. **Proof to lie on the claimer.**

By stat. 23 *G.* 2. *c.* 21. § 35. Where any starch shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer.

Appeal.

§ 37. If the party find himself aggrieved by the judgment given by the justices, in case of condemnation of goods seized under this act, he may appeal to the next quarter sessions, whose judgment shall be final (except in the case before mentioned, where no person shall claim the goods seized within 20 days).

Mitigation.

§ 38. The commissioners or justices may mitigate the penalties and forfeitures under this act, as they shall think fit, the reasonable costs and charges of the officers, as well in making the discovery as in the prosecution, being allowed above such mitigation, and so as the penalty be not reduced to less than one-fourth part thereof, above the said costs and charges.

§ 40. No writ of *certiorari* shall supersede execution, or other proceedings under this act.

10 Ann. c.26. 28 G.3. c.37. **Utensils liable.**

And by stat. 10 *Ann. c.* 26. § 23. & 28 *G.* 3. *c.* 37. § 21. All starch, materials, and utensils, in custody of the maker, or of any person to his use, shall be liable to all arrears of the duty and penalties; and such proceedings may be had thereupon as if the debtor or offender were the lawful owner.

(*a*) There is a particular method directed for levying the penalties imposed by 23 *G.*3. *c.*21.; which being the same as for Candles, see *ante*, this title, Sect. IV. (4.)

§ IV. (18.) Stone Bottles.

[52 G. 3. c. 139.—57 G. 3. c. 32.—c. 119.]

For the duties of customs on stone and slate carried coastwise, *vide* stat. 4 *G.* 4. *c.* 69. Vol. V. *tit.* Stone.

57 G. 3. c. 32. Duties.

By stat. 57 *G.* 3. *c.* 32. Certain duties are granted upon stone bottles.

For every hundred weight of stone bottles, not exceeding two quarts measure, made in *Ireland*, and imported from thence into *G. B.*, 5*s.*, and so in proportion for any greater or less quantity:

For every hundred weight of stone bottles, not exceeding two quarts measure, imported from any other place beyond the seas, 5*s.*, and so in proportion:

And for every hundred weight of stone bottles, not exceeding two quarts measure, made in *G. B.*, 5*s.*, and so in proportion.

Drawback.

Upon exportation of any stone bottles made in *G. B.*, or made in *Ireland* and imported into *G. B.*, in respect whereof the duties by this act imposed shall have been paid, and which shall be stamped in some visible part thereof in the making thereof with a mark, to be directed by the commissioners of excise, to any port or place beyond the seas, except the islands of *Faro* and *Ferro*, there shall be paid a drawback of 5*s.* for every hundred weight, and so in proportion.

Regulating the dimensions of stone bottles.

§ 3. Every bottle or other vessel which may be used as or for a bottle, made of earthen or stone ware, or of earth or clay alone, or mixed with any other material, which shall not exceed two quarts in measure, or the mouth or neck of which shall not exceed in diameter, in the narrowest part of the inside thereof, three inches, and no other, shall be deemed to be a stone bottle within the meaning of this act.

Bottles not to be made of less size than three ounces in measure of distilled water, on penalty of 50*l.*

§ 7. No maker of earthen or stone ware, or of bottles or other vessels made of earthen or stone ware, or of earth or clay alone, or mixed with any other material, shall make of earthen or stone ware, or of earth or clay alone, or mixed with any other material, any bottle or vessel which may be used as or for a bottle, of less size or content than three ounces in measure of distilled water; on pain of forfeiting 50*l.*

57 G. 3. c. 119. Stone bottles used for containing *liquid blacking* exempted from duty.

By stat. 57 *G.* 3. *c.* 119. § 1. All stone bottles made in *G. B.*, or made in *Ireland* and imported into *G. B.*, and used for the sole purpose of containing liquid blacking, and which shall be of the description after specified, shall be exempted from the duties imposed, and not be entitled to the drawback.

Description of the stone bottles so exempted from duty.

§ 2. Every such bottle made of earthen or stone ware, or of earth or clay alone, or mixed with any other material, which shall not exceed one pint in measure, and the mouth and neck of which shall be not less than one inch and a half in diameter in the narrowest part of the inside thereof, and which shall be permanently stamped in the making thereof, in fair and legible characters, with the words *Blacking Bottle*, and no other, shall be deemed a stone bottle made for the sole purpose of containing liquid blacking, and be exempted from the duties.

Penalty.

§ 3. If any person shall sell any such stone bottle for any purpose other than for containing liquid blacking, or shall at-

tempt to export the same upon drawback, such person shall forfeit 50*l.*

By stat. 52 *G.* 3. *c.* 139. § 3. Within 20 days next after the master or purser of the ship wherein any stone bottles shall be imported, shall have or ought to have made a report at the custom house, the proprietor, importer, or consignee of such bottles shall make due entry with the collector of excise in the place were such shall be so imported, of all such on board of such ship belonging to him, &c., and shall then and before the landing pay the duty, and shall also within such 20 days land all such bottles, on pain to forfeit such bottles, and which may be seized by any officer of excise. 52 G. 3. c. 139. Importation.

§ 4. Every maker, before he shall make any stone bottles, shall make a true and particular entry in writing of every house, workhouse, millhouse, warehouse, shed, shop, room, and place by him used, or intended to be used for the wetting, softening, grinding, preparing, mixing, or keeping of any clay, earth, or other materials commonly used or fit to be used in making stone bottles, or in the making, hardening, drying, baking, burning, or keeping of such bottles; and also of every cone, kiln, stove, vat, cistern, mill, lathe, trundle, or other machine, implement, vessel, or utensil by him kept or used, or intended to be used in the making, manufacturing, turning, hardening, drying, baking, or burning of such bottles, at the office of excise within the limits whereof such place, utensil, &c. &c. shall be situate; on pain of forfeiting 100*l.* for such place or utensil not so entered, with all the stone bottles and other materials found therein, which may be seized by any officer of excise. Entry of places.

§ 6. The officers of excise, at all times between 5 in the morning and 11 at night, without a constable, and between 11 at night and 5 in the morning, in the presence of a constable, may enter into the houses, workhouses, millhouses, warehouses, sheds, shops, rooms, and other places entered or used by any maker of stone bottles, and by weighing or otherwise take an account of the weights, kinds, and quantities of the stone bottles made, or found in the possession of such maker. Officers to enter and take an account.

§ 7. Every maker being desirous to put stone bottles in any kiln, stove, or oven for baking or burning the same, shall give to the officer under whose survey he shall be six hours' previous notice in writing of such his intention, specifying the particular kiln, &c. in which such stone bottles are to be deposited, and the hour at which it is intended to deposit the same; and if any such maker shall neglect to begin so to deposit such stone bottles in the kiln, &c. within one hour after the time mentioned in the notice, such notice shall be void, and such maker shall give a fresh one; and if any maker shall put stone bottles into any kiln, &c. without having given such notice, he shall forfeit 50*l.*

§ 8. Before any maker shall begin to close or stop up any kiln, &c. containing stone bottles, he shall deliver to the officer a declaration in writing of the names by which the bottles of each particular kind are commonly known, with the reputed measure of such bottles of each size, and the number thereof contained in each such kiln, &c., on pain of forfeiting 50*l.*: Provided, that no maker shall incur the said penalty if the number Declaration of number, size, &c. of stone bottles before stopping up kiln, &c.

52 G.3. c.139. of bottles of any particular kind specified in any declaration shall not vary more than at the rate of five *per centum* from the true numbers.

Makers to give notice for lighting fires to heat kilns, &c.

§ 9. When any maker shall be desirous to light fire to heat his kiln, stove, or oven, into which stone bottles are intended to be put for baking or burning, he shall give to the officer six hours' notice in writing of his intent: Provided that no maker shall kindle, any fire for the purpose aforesaid, till after the expiration of one hour from the time when the depositing the stone bottles shall be finished; and if any such maker shall so light any fire for that or any other purpose till after one hour as aforesaid, he shall forfeit 50*l.*; and if he shall neglect to light such fire within one hour after the time mentioned, such notice shall be void, and he shall give a fresh one; and if any such maker shall so light fire without previous notice, he shall forfeit 50*l.*

§ 10. Every maker shall provide a convenient weighing room in or adjoining to each kiln, &c.

Makers required to keep scales and weights, &c.

Penalty.

§ 11. Every maker shall keep sufficient and just scales and weights at the place where he shall manufacture stone bottles, and permit any officers of excise to use the same for weighing and taking an account of and re-weighing the stone bottles in the possession of such maker; upon penalty for every neglect and refusal of forfeiting 100*l.*; and if in the weighing or re-weighing he shall use or suffer to be used any false or insufficient scales or weights, or practise any contrivance by which any such officers may be prevented or hindered in taking the true weight of any stone bottles, such maker shall forfeit 100*l.* with all such scales and weights, which may be seized by any officer of excise.

Makers to give notice to officer before drawing any stone bottles from kiln, &c.

§ 12. Every maker desirous to draw stone bottles out of any kiln, oven, &c. shall, 12 hours before the beginning, give to the officer a notice in writing of his intention, specifying the particular kiln, &c. and the time and hour at which it is intended to draw the same; and if any officer shall attend at the time mentioned in the notice, such maker shall, so soon as he shall so attend, immediately, with a sufficient number of his workmen, begin to draw the bottles out of such kiln, &c. and without unnecessary delay, and with a proper number of his workmen or servants, proceed until the whole shall be drawn out.

Stone bottles when drawn to be conveyed to the weighing room and inspected and weighed.

§ 12. And every maker, so soon as any stone bottles not exceeding two quarts measure shall be drawn out, shall convey the same directly into the weighing room, and forthwith place the same therein, in such manner that all may, so far as the nature of the case will admit, be easily inspected and examined, and the numbers of the several sizes and denominations be ascertained by the officer; and such maker shall immediately, if the proper officer then be in attendance, and if not, then on being required by such officer, proceed to weigh and shall weigh the whole of such bottles in the presence of the officer; and such maker shall be charged with and pay the duty for all such as are unbroken, according to such weight. And if any maker, having given such notice and begun to draw, shall not, if any officer shall attend at the time specified in the notice, without any unnecessary delay, and with a proper number of workmen, continue to draw such bottles from the kiln, or if any maker shall not remove and de-

posit them in the weighing room, and in such manner as aforesaid, or shall not proceed to weigh as aforesaid, he shall forfeit 100*l.*; and if any maker shall neglect to begin to draw at the time mentioned in his notice, or within one hour after, such notice shall be void, and he shall give a fresh notice: provided, that no maker shall be at liberty to give any such notice, except between six in the morning and six in the afternoon; and every notice given for drawing stone bottles at other times shall be void. 52 G.3. c.139. Penalty.

§ 13. In weighing stone bottles, the turn of the scale shall be in favour of the crown, and in lieu thereof there shall be allowed to the maker 1 lb. upon each 100lbs. so weighed. Allowance for turn of scale.

§ 14. All stone bottles chargeable with duties shall be weighed and charged so soon as the same shall be baked or burned; and if any maker, or his workmen or other person, shall molest or obstruct any officer in weighing or taking such account, he or they shall forfeit 100*l.* Stone bottles charged with duty as soon as baked. Obstructing Officers.

§ 15. Every maker whose stone bottles have been weighed by any officer, shall, for six hours after, keep such stone bottles in the weighing room, in the same state and position in which they were left by the surveying officer unless sooner re-weighed by the surveyor or supervisor, to the end that he may have an opportunity to re-weigh the same, on pain of forfeiting 100*l.*; and, if upon the re-weighing any additional weight shall be found, such additional weight shall be charged with the duties. Stone bottles re-weighed, and makers shall not remove them from weighing room for six hours.

§ 16. Every maker shall, when required by the officer, surveyor, or supervisor, with a sufficient number of his servants, assist the officer in weighing, and the surveyor or supervisor in re-weighing all his stone bottles, on pain of forfeiting 100*l.* Makers, &c. to assist officers in weighing, &c.

§ 17. If any maker shall convey away stone bottles not exceeding two quarts measure from any kiln, &c. before the proper officer shall have weighed the same, or shall neglect to produce such bottles to the officer that he may weigh them; or if any person shall hide or conceal any stone bottle, to defraud H. M. of the duties, every maker or person so offending shall forfeit 100*l.* Makers removing bottles from kilns, &c. before weighed. Penalty.

§ 18. Every maker shall keep all stone bottles which shall not have been weighed by the officer separate from those that have been weighed, upon pain of 100*l.* Stone bottles not weighed kept separate.

§ 19. Every maker shall once in every six weeks make a true entry in writing at the office of excise, within the limits whereof such stone bottles shall be made, of all the stone bottles not exceeding two quarts measure by him made within such six weeks; and such entries shall contain the numbers and sorts thereof, with the reputed measures of each particular sort, with the aggregate weight of the total number so made within such six weeks, on pain of forfeiting 100*l.*; which entry shall be verified upon oath by the maker or by his chief workman employed in making the same, which oath shall be administered by the proper collector, surveyor, or supervisor, without fee: Provided, that no such maker shall be obliged to go further than the market town next to the place where such stone bottles shall be made for the making of any such entry. Makers to make entry every six weeks of stone bottles manufactured. Penalty. Proviso.

§ 20. Every maker shall, within six weeks after he shall make or ought to have made such entry, pay off the duties for such stone bottles, upon pain of forfeiting double such duties. Makers to clear off duties.

52 G. 3. c. 139. Officers may take samples of stone bottles.

§ 21. Any officer of excise may take a sample of any stone bottles or earthen-ware, either baked or unbaked, or burnt or unburnt, in the possession of any maker, paying for the same, if demanded, the wholesale price thereof; and if any maker shall refuse to permit the officer to take such sample, upon his tendering such price for the same, he shall forfeit 100*l.*

Penalty.

Stone bottles concealed forfeited, with package, &c.

§ 22. If any stone bottles shall be fraudulently concealed in any place whatsoever, with intent to defraud H. M., the same shall be forfeited, together with the packages, and they may be seized by any officer of excise, and the person in whose custody the same shall be found shall forfeit 50*l.*; and if any officer shall have cause to suspect that stone bottles shall be so concealed in any place whatsoever, then, if such place be within the limits of the chief office of excise, upon oath made by such officer before two of the commissioners of excise, or before one justice of the county, &c. where such place shall be in any part of *G. B.*, upon oath by such officer before such justice where such officer shall suspect the same to be concealed, setting forth the ground of his suspicion, it shall be lawful for the said commissioners, or the justice, as the case may require, if he or they shall judge it reasonable, by special warrant to authorize such officer by day or by night, (but if in the night, in the presence of a constable,) to enter every such suspected place, and to seize and carry away all such stone bottles as he shall then find so forfeited, together with the packages containing the same.

Penalty.

Suspected places searched.

Makers making use of concealed place.

§ 23. If any maker of stone bottles shall make use of any private or concealed cone, kiln, stove, or oven, or any private or concealed vat, cistern, mill, lathe, trundle, or other machine, implement, utensil, or place whatsoever, other than such as are known and entered, he shall forfeit 100*l.*

Penalty.

Stone bottles and materials answerable for duties.

§ 26. All stone bottles and all the materials and implements and utensils for the making thereof in the possession of any maker, or of any person to the use of or in trust for him, shall be chargeable with all the duties in arrear and owing by such maker, and shall also be liable to all penalties and forfeitures incurred by him, or the person using any such workhouse or place; and such duties and penalties may be levied as if the debtor or offender were the owner.

Makers not to act as justices in execution of act.

§ 27. No person being a maker of stone bottles, or interested in the trade of making or dealing therein, shall act as a justice in any matter concerning the execution of this act.

Obstructing officers.

§ 28. If any person shall assault, resist, molest, or hinder any officer of excise in the due execution of this act, or shall by force rescue any such stone bottles, or any clay, earth, or other material, or any vessel or utensil seized by any such officer as forfeited by this act, or shall attempt so to do, such person shall forfeit 200*l.*

Penalty.

Offering bribes to officers.

§ 29. If any person shall give or offer to give any bribe, recompence, or reward, to any officer of excise, in order to corrupt or prevail upon him to perform or to neglect any act or thing belonging to the business or duty of such officer in the execution of this act, or to connive at or conceal any fraud relating to the duties by this act, or not to discover the same, such person shall, for each such offence, (whether such offer or proposal be accepted or not) forfeit 500*l.*

Penalty.

§ 30. Any person convicted of wilfully taking a false oath, in any case in which an oath is required to be taken by this act, shall be liable to the pains for wilful and corrupt perjury. 52 G.3. c.139. Perjury.

§ 34. The powers of other excise acts extended to this.

By stats. 52 *G.*3. *c.*139. § 31. — 57 *G.*3. *c.*32. § 7. — *c.* 119. § 3. All penalties and forfeitures by those acts shall be sued for, recovered, or mitigated, as by any law of excise, or in any of the courts of record at *Westminster*, &c., one moiety of which shall be to the king, and the other to him who shall inform, discover, or sue for the same. Penalties, how to be recovered.

By stat. 57 *G.*3. *c.*32. § 5. The duties and drawbacks hereby imposed and granted shall be raised and paid, in the like manner as the duties repealed; and every fine and forfeiture for any offence against the acts for securing the revenue of excise shall be applied to the duties and drawbacks in this act. 57 G.3. c.32. Duties, how to be levied.

IV. (19.) Sweets.

[7 & 8 W.3. c.21. — 10 & 11 W.3. c.21. — 6 G.1. c.21. — 10 G.2. c.17. — 24 G.3. sess.2. c.41. — 26 G.3. c.74. — 28 G.3. c.37. — 30 G.3. c.38. — 32 G.3. c.59. — 42 G.3. c.93. — 43 G.3. c.69. — c. 81. — 53 G.3. c.103. — 55 G.3. c.30. — c.177. — 57 G.3. c.111. — 59 G.3. c.89. — 3 G.4. c.27.]

By stat. 43 *G.*3. *c.*69. *Sched.* (A.) Every maker of any kind of sweets or made wines, other than mead, for sale, shall take out a licence, for which he shall pay 5*l.*; and by 55 *G.* 3. *c.* 30. (continued by 3 *G.*4. *c.*27. until 5th *July*, 1826,) 5*l.* additional; and by 24 *G.*3. *sess.*2. *c.*41. § 7. he shall renew the said licence annually, ten days at least before the end of the year; on pain of 30*l.* 43 G.3. c.69. Licence for making sweets.

§ 8. But persons in partnership need only take out one licence for one house.

By stat. 10 & 11 *W.*3. *c.*21. § 5. Every person who shall sell or use any materials used in the making of wines, and in whose custody any quantity exceeding two gallons shall be found, shall be deemed a maker of sweets for sale. 10 & 11 W.3. c.21. Who shall be deemed a maker.

By stat. 55 *G.*3. *c.*177. § 4. Every person who shall have in his custody any liquors made by infusion, fermentation, or otherwise, from fruit or sugar, or from fruit or sugar mixed with any other materials, commonly called *sweets* or *made wines*, exceeding 100 gallons, shall be deemed a maker of sweets or made wines for sale, and subject to the survey of the officers of excise. 55 G.3. c.177. Persons having in possession sweets exceeding 100 gallons, deemed makers.

By stat. 43 *G.*3. *c.*69. *Sched.* (A.) Upon every barrel of liquor which shall be made in *G. B.* for sale, by infusion, fermentation, or otherwise, from fruit or sugar, or fruit and sugar mixed with any other ingredients, commonly called *sweets* or *made wines*, and so in proportion for a greater or less quantity, shall be paid by the maker a certain duty as therein mentioned. 43 G.3. c.69. Duty on sweets.

And by (*a*) 43 *G.*3. *c.*81. a further duty is imposed. 43 G.3. c.81.

By stat. 57 *G.*3. *c.*111. § 1, 2. One third part of the duties of excise payable on every barrel of liquor made in *G. B.* for sale,

(*a*) This duty was to continue until 12 months after the ratification of the definitive treaty of peace, but is continued by stat. 5 G.4. c.15. until 5th July, 1825.

57 G.3. c.111. commonly called sweets or made wines, and one third part of the countervailing duties on sweets or made wines of *Irish* manufacture imported from *Ireland* into *G. B.*, were suspended until 10th *October*, 1819, and by stat. 59 *G.3. c.*89. till 10th *October*, 1824, and by stat. 5 *G.4. c.*40. § 2. till 10th *October*, 1827.

N. B. *The additional duty imposed by* 55 *G.3. c.*30. *is repealed by* 59 *G.3. c.*105. § 11.

43 G.3. c.69. Licence for retailing. 30 G.3. c.38.

By stat. 43 *G.3. c.*69. *Sched.* (A.) Every retailer of sweets or *British* made wines, shall take out a licence from the officers of excise, for which he shall pay 2*l.* 4*s.*: which licence, by 30 *G.3. c.*38. § 6, 7, 8. shall continue in force until and upon the 10th day of *October* next ensuing the granting thereof, and no longer: Provided nevertheless, that where such licence shall be first granted between the 5th of *April* and the 10th of *October* in any year, there shall be charged only a rateable proportion of the money aforesaid, according to the time for which such licence shall be granted.

Penalty.

§ 9. Every person who shall retail any *British* made wines or sweets without such licence shall forfeit 50*l.*

To be renewed annually.

And the same shall be renewed annually ten days at least before the expiration of the former licence, on the like penalty. *Id.*

Who only to be licensed.

§ 14. But no licence shall be granted by virtue of this act to any other than such persons only as might have licences before the passing thereof.

53 G.3. c.103. Transfer of licences.

By stat. 53 *G.3. c.*103. Upon the death of any person licenced, or upon the removal of any person from the house or premises in which his licence shall authorize him to make or manufacture, deal in, vend, or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorize the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted.

28 G.3. c.37.

By stats. 28 *G.3. c.*37. § 32. & 32 *G.3. c.*59. § 9. No person by virtue of any licence from the officers of excise for the sale of *British* made wines or sweets shall sell the same by retail to be drank in his own house, &c.; except a licence shall have been granted to him by the justices or other officers to sell ale, beer, and other liquors in the same house. And the justices and all other officers shall have the same jurisdiction, power, and authority over such retailers of *British* made wines or sweets, as they now have over alehouse-keepers.

32 G.3. c.59.

32 G.3. c.59.

And by stat. 32 *G.3. c.*59. § 9. If any person shall sell by retail to be drank as aforesaid, any such *British* made wines or sweets, without having such ale licence, he shall forfeit the like penalties as persons selling ale without licence are subject to by 5 *G.3. c.*46. The same to be recovered and applied as by that or any other act relating thereto is directed.

30 G.3. c.38. Persons in partnership.

By stat. 30 *G.3. c.*38. § 10. Persons in partnership need not take out more than one licence for one house or place: but such licence shall not extend to any other house or place than such as shall be entered.

House or place to be entered.

But no licence shall authorise any person to sell *British* made wines or sweets in any other than such house, shop, or place in

which he shall retail the same at the time of granting such licence; and an entry thereof in writing shall be made at the excise office in the name of such person at the time of granting such licence. *Id.* 30 G.3. c.38.

§ 15. And every person who shall sell or expose to sale any *British* made wines or sweets, in the quantity of 25 gallons or under, shall be deemed a retailer within the meaning of this act. Who shall be deemed a retailer.

And by stat. 26 *G*.3. *c*.74. § 7. Every such licenced retailer shall cause the words *Dealer in British Wine* to be written or painted in legible characters, either on a sign hung out, or on some conspicuous place in the front of his house or shop; on pain of forfeiting 10*l*. 26 G.3. c.74. Certain words to be put up.

By stat. 10 *G*.2. *c*.17. § 4. Every maker of *sweets* for sale shall first give notice to the excise officers of his name and place of abode, and of the rooms and places he intends to use for making or keeping of sweets or made wines; on pain of 20*l*. 10 G.2. c.17. Notice to be given.

By stat. 55 *G*.3. *c*.177. § 1. Every maker of sweets or made wines for sale shall, before he begin to draw off any sweets or made wine from any steep or utensil in which the same shall have been made, give to the officer of excise, under whose survey such maker shall then be, six hours' notice in writing within the limits of the chief office of excise in *London*, and twelve hours' notice in writing in other places in *G. B.*, of his intention to draw off; and of the time when, and the particular steep or utensil from which the same are to be drawn off, and the quantity thereof; and such officer shall, if he shall deem it expedient, attend to see such sweets or made wine so drawn off; and if such officer shall attend, the sweets or made wine shall be, with all diligence and dispatch, drawn off in his presence; and if any such maker shall draw off any sweets or made wine without giving such notice, or shall neglect to draw off with all due diligence and dispatch, on the officer's attendance, such maker shall forfeit 50*l*., with all such sweets or made wine drawn off without such notice. 55 G.3. c.177. Makers to give notice to the officer of excise before any sweets are drawn off, and to state the quantity. Penalty for neglect.

§ 2. Nothing hereinbefore contained shall extend to subject any maker to the said forfeiture, for not specifying in his notice the quantity to be drawn off, in case the whole of the sweets or made wines in the steep or utensil mentioned in such notice shall be intended to be drawn off; and such maker shall have specified in the notice that the whole are so to be drawn off; and if the whole shall be drawn off with due diligence and dispatch, and the pressing out of the remains from the fruit finished within seventy-two hours from the commencement thereof. Makers not subject to penalty for not specifying quantity in notice, if the whole of the quantity contained in the vessel be drawn off.

§ 3. No maker of sweets or made wines, other than mead, for sale, shall sell or send out any liquor made by infusion, fermentation, or otherwise, from fruit or sugar, or from fruit or sugar mixed with other materials, commonly called *sweets*, or *made wines*, in any less quantity than in a whole cask containing fifteen gallons, on pain of forfeiting 50*l*. Makers not to send out sweets in less quantity than casks of 15 gallons.

And by stat. 7 & 8 *W*. 3. *c*. 30. § 16. If any maker of *sweets* for sale shall conceal any sweets from the view of the gauger, he shall for every barrel forfeit 40*s*. 7&8 W.3. c.30. Concealing sweets.

By stat. 6 *G*.1. *c*.21. § 22. If any *sweets*, having paid the duty, shall be intended to be removed, the excise officer shall on request give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be sent; 6 G.1. c.21. Permit for removal after duty paid.

6 G.1. c.21. and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10*s*. a gallon, and also the liquor and casks.

42 G.3. c.93. Seizing packages, vessels, carriages, &c. By stat. 42 *G*.3. *c*.93. § 18. Where goods are forfeited under any act relating to the excise, the packages containing the same, and the vessel, boat, cart, carriage, and cattle used in the removal thereof, shall be forfeited, and may be seized by any officer of excise.

Penalties. By stats. 24 *G*.3. *c*.41. § 11. 30 *G*.3. *c*.38. § 16. 43 *G*.3. *c*.69. § 4. 55 *G*.3. *c*.177. § 5. all penalties and forfeitures are to be sued for, recovered, and mitigated as by the laws of excise (*a*), or in the courts at *Westminster*; and to go half to the king and half to him who shall sue.

§ IV. (20). Tobacco and Snuff.

[1 G.1. st. 2. c.46.—5 G.1. c.11.—8 G.1. c.18.—12 G.1. c.28. —5 G.3. c.43.—29 G.3. c.68.—30 G.3. c.40.—43 G.3. c.69.— c.134.—47 G.3. st.1. c.25.—48 G.3. c.84.—52 G.3. c.159. —53 G.3. c.88. — c.103.—55 G.3. c.30.—59 G.3. c.53. — c.74.—1 G.4. c.75.—1 & 2 G.4. c.109.—3 G.4. c.27.—c.42. —4 G.4. c.69.

N. B. Stat. 29 *G*.3. *c*.68. regulating the importation, exportation, and manufacture of tobacco and snuff, being of great length, it is thought sufficient in this place to give a short account thereof only; and also of stat. 30 *G*.3. *c*. 40. made to explain and amend the same; and for further information to those whom it may materially concern, to refer them to the acts themselves.

By which act of 29 *G*.3. *c*.68. § 1, 2. 171., the 20 *G*.2. *c*.13. — 24 *G*.2. *c*.41. — 23 *G*.3. *c*.11. — 25 *G*.3. *c*.81. — and 26 *G*.3.

43 G.3. c.69. Duties. *c*.52. are repealed. And by 43 *G*. 3. *c*.69. (*Excise*) all duties are repealed, and other duties are granted in lieu thereof.

N. B. Tobacco and snuff are also subject to annual duties by the act for continuing the duties on pensions, offices, &c.

59 G.3. c.53. sch. (C.) And certain drawbacks are allowed upon the exportation thereof.

Which duties are to be under the management of the commissioners of the customs and excise.

29 G.3. c.68. Importation. By stat. 29 *G*.3. *c*.68. § 5, 6. No tobacco shall be imported but from *America*, on forfeiture thereof, with the vessel and her contents; except from *Spain*, *Portugal*, and *Ireland*, from which places it may be imported under certain regulations. But by stat. 59 *G*.3. *c*.74. § 1. tobacco may be imported from any port or place within the limits of the charter granted to the East India Company, in any *British* ship or vessel owned, registered, and navigated according to law: Provided, that such tobacco shall not be imported in any cask, chest, case, or other package which shall not contain at the least 100lbs. weight net of tobacco, not packed in bags or packages within any such cask, nor separated within any such cask, or in any manner whatever, on pain of

59 G.3. c.74. Tobacco may be imported from the East Indies in British vessels; but in casks containing not less than 100lbs. and not in bags or packages within such casks, on pain of forfeiture.

(*a*) For which see *ante*, Sect. II.

forfeiting all such tobacco, with the casks, chests, cases, and other packages containing the same, and also the ship, vessel, or boat in which the same shall be so imported or brought, with her guns, furniture, ammunition, tackle and apparel; which may be seized by any officer of the customs or excise: provided that such tobacco shall be liable to all the provisions of the acts now in force regulating the trade to and from the places within the limits of the charter granted to the East India Company. 59 G.3. c.74.

By stat. 1 *G*.4. *c*.75. § 1. There shall be paid upon every pound weight avoirdupoise of unmanufactured tobacco which shall be imported under stat. 59 *G*.3. *c*.74. § 2. (*a*) not being tobacco of the growth or production of his H. M.'s colonies, plantations, islands, or territories in *America* or the *West Indies*, or of the United States of *America*, or of any of the territories or dominions of the emperor of *Russia*, or of the *Ottoman* or *Turkish* empire, or imported from any port or place within the limits of the charter granted to the East India Company, and upon every pound weight avoirdupois of all such unmanufactured tobacco imported under the said provisions, which on the passing of this act was in warehouse, an excise duty of five shillings. 1 G.4. c.75. Duty of 5*s*. for every lb. of unmanufactured tobacco imported under 59 G.3. c.74., not being of the growth of H. M.'s colonies in America or the West Indies, nor of the United States, or of Russia, Turkey, or within the limits of the East India Company.

§ 2. The duty by this act imposed shall be under the management of the commissioners of excise in *England* and *Scotland*.

§ 3. The said duty shall be raised in like manner as other duties of excise, payable upon unmanufactured tobacco; and the persons, goods, wares, merchandize, or commodities, chargeable with the said duty, shall be liable to all the regulations in force before the passing of this act.

§ 4. All the monies arising by the duty by this act imposed, shall be paid into the exchequer, and carried to the consolidated fund.

By stat. 29 *G*.3. *c*.68. § 47. No tobacco, either manufactured or unmanufactured, shall be entered or shipped for exportation to any parts beyond the seas, *Ireland* excepted, in any ship or vessel whatever, unless such ship or vessel shall be of the burthen of 70 tons or upwards; and if any officer of customs or excise shall apprehend that any such vessel is of a less burthen, he may detain her, with the cargo, until he cause her to be measured according to the rules prescribed by stat. 26 *G*.3. *c*.60.; and if it shall appear that such vessel is of the burthen of 70 tons or upwards, the officer shall not be liable to any damages for such detention; and if the master shall clear out his vessel as of a proper burthen, and she shall not be of the burthen of 70 tons, he shall forfeit 100*l*. 29 G.3. c.68. Tobacco shall be exported in vessels of 70 tons or upwards. Penalty.

But by stat. 4 *G*.4. *c*.69. § 21. After the 10th of *October*, 1823, it shall be lawful to carry and export from *G. B.* to *Ireland*, and from *Ireland* to *G. B.*, and to import into *Ireland* from *G. B.*, and into *G. B.* from *Ireland*, any tobacco, either manufactured or unmanufactured, in any ship or vessel of the burthen of 70 tons or upwards, subject nevertheless to all such rules, regulations, restrictions, penalties, and forfeitures, as are imposed upon such importation and exportation respectively, in vessels of the tonnage in which such tobacco may be exported or imported, under any 4 G.4. c.69. Tobacco may be exported and imported between G.B. and Ireland in ships not less than 70 tons.

(*a*) This clause is repealed by stat. 3 *G*.4. *c*.42. § 32.

4 G.4 c.69.

If exported or imported in vessels of less burthen, vessels and tobacco forfeited.

act or acts in force before the passing of this act: provided, that if any such tobacco shall be so exported or imported in a vessel of less burthen than 70 tons, all such tobacco, and also the ship, vessel, and boat, with their materials and furniture, shall be forfeited, and may be seized by any officer of the customs or excise.

29 G.3. c.68. Importation of tobacco or snuff: in what vessels, packages, quantities, &c.

By stat. 29 *G.* 3. *c.* 68. § 7, 8, 9, 10, 11. No tobacco or snuff shall be imported in any vessel of less burthen than 120 tons; nor any tobacco stalks, tobacco stalk flour, or snuff work, in any vessel whatever; nor any tobacco or snuff in any hogshead, cask, or other package less than 450lb. on the like penalty; except loose tobacco for the crew or passengers, not exceeding 5lb. for each person; nor shall the vessel be forfeited if proof be made from the smallness of the quantity that such tobacco or snuff was on board without the knowledge of the owner or master, and without any want of reasonable care on their part. And in each of the above cases, the tobacco and snuff, together with the packages, and also the ship, vessel, &c. in which imported, may be seized by the officers of customs or excise. See also stat. 30 *G.* 3. *c.* 40. § 3.

47 G.3. st.1. c.25.

By stat. 47 *G.*3. *st.* 1. *c.* 25. § 1. The preceding restriction is repealed as to the packing and dividing tobacco within the outer hogshead, cask, chest, or case.

And by § 2. the outer hogsheads, &c. must contain 450lbs. net at the least of tobacco.

At what ports.

By stat. 29 *G.* 3. *s.* 68. § 14. No tobacco or snuff shall be imported except at *London*, *Bristol*, *Liverpool*, *Lancaster*, *Cowes*, *Falmouth*, *Whitehaven*, and *Hull;* [and by 31 *G.* 3. *c.* 47. § 3. *Newcastle-upon-Tyne*,] on the like forfeiture.

43 G.3. c.69. *Manufacturers to be licensed.*

By stat. 43 *G.* 3. *c.* 69. *Sch.* (A). Every *manufacturer* of tobacco or snuff shall take out a licence from the officers of excise, for which he shall pay, if the quantity of tobacco and snuff work weighed by him for manufacture within the year ending the 10th of *October* previous to his taking out such licence, did not exceed 20,000lbs. - - - - - - £2 0 0

And by stat. 55 *G.* 3. *c.* 30. (*a*) the further sum of - 1 0 0

				By 43 G. 3.			Additional By 55 G. 3.		
If above	20,000	and did not exceed	30,000lb.	£3	0	0	£1	10	0
Ditto	30,000	- -	40,000	4	0	0	2	0	0
Ditto	40,000	- -	50,000	5	0	0	2	10	0
Ditto	50,000	- -	60,000	6	0	0	3	0	0
Ditto	60,000	- -	70,000	7	0	0	3	10	0
Ditto	70,000	- -	80,000	8	0	0	4	0	0
Ditto	80,000	- -	90,000	9	0	0	4	10	0
Ditto	90,000	- -	100,000	10	0	0	5	0	0
Ditto	100,000	- -	120,000	12	0	0	6	0	0
Ditto	120,000	- -	150,000	15	0	0	7	10	0
Ditto	150,000	- -	-	20	0	0	10	0	0

Every person who shall first become a manufacturer of tobacco or snuff, for every such licence 2*l.*, and within 10 days after

(*a*) Continued by 3 *G.*4. *c.*27. until 5th July, 1826.

	By 43 G. 3.	Additional By 55 G. 3.	43 G. 3. c. 69. 55 G. 3. c. 30.
the 10th of *October* next after taking out such licence, such further additional sum, as with the said 2*l*. shall amount to the duty herein-before directed to be paid, according to the quantity of tobacco and snuff-work weighed for manufacture within the preceding year - - -	2 0 0	1 0 0 and a surcharge.	

And every *dealer* in tobacco and snuff shall take out a licence in like manner, for which he shall pay, within the liberties of the chief office in *London*, 10*s*., elsewhere 5*s*. *Dealers* to be licensed.

But by stat. 29 *G*. 3. *c*. 68. § 73. Persons licensed as manufacturers, who shall not at any time sell tobacco in a less quantity than 4lb. nor snuff in less than 2lb. need not be licensed as dealers. Exception.

§ 72. Every person who shall manufacture or deal in tobacco or snuff without taking out such licence; or shall not renew the same ten days at least before the end of the year, shall forfeit, if a manufacturer, 200*l*., and if a dealer 50*l*. Penalty.

§ 75. But no person shall be liable to the said penalty of 50*l*. for selling unmanufactured tobacco or snuff whilst remaining in the king's warehouse.

§ 74. But persons in partnership need not take out more than one licence for one house. Partners.

By stat. 53 *G*. 3. *c*. 103. Upon the death of any person, or removal of any person from the house or premises in which his licence shall authorize him to manufacture, deal in, vend, or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorise the executor, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade during the residue of the term for which such licence was granted. 53 G. 3. c. 103. Transfer of licences.

By stat. 29 *G*. 3. *c*. 68. § 155. Every person who shall manufacture tobacco, tobacco-stalks, or returns of tobacco, or manufacture or flatten any tobacco-stalks, or cut the same into *Spanish*, shall be deemed a *manufacturer of tobacco*. And every person who shall grind or manufacture any tobacco stalk flour, snuff-work, or snuff, shall be deemed a *manufacturer of snuff*. And every person who shall sell any tobacco, tobacco stalks, or returns of tobacco, or stalks flattened or cut into *Spanish*, shall be deemed a *dealer in tobacco*. And every person who shall sell any tobacco-stalk flour, snuff work, or snuff, shall be deemed a *dealer in snuff*, within the meaning of this act. 29 G. 3. c. 68. Who shall be deemed *manufacturers*, and who *dealers*.

By stat. 1 & 2 *G*. 4. *c*. 109. § 9. Every manufacturer of segars shall be deemed a manufacturer of tobacco. Segars.

By stat. 29 *G*. 3. *c*. 68. § 59. Every manufacturer and dealer shall make entry in writing of his house or place intended to be made use of for manufacturing, keeping, or selling tobacco, tobacco stalks, *Spanish*, tobacco stalks for tobacco stalk flour, snuff work, tobacco stalk flour, or snuff, three days before he shall begin; on pain of forfeiting 200*l*., and also the tobacco, &c. &c. there found, together with the casks and packages, which may be seized by the officers of the customs or excise. Entry to be made.

§ 60. Where entry shall be made of any house or place for manufacturing, keeping, or selling tobacco, &c. &c. no other entry

29 G.3. c.68. shall be made by any other person (except partners) of any place under the same roof, or within the same house or tenement; on the like penalty.

Who may make &c. or sell tobacco.

§ 61. But the person making the same, within the limits of the head office, must occupy a tenement of 10*l.* a year, and pay to the parish-rates; elsewhere, he must pay to the church and poor.

Entry of mills, presses, &c.

§ 69. Every such manufacturer shall, three days before he begins to manufacture, make entry in writing at the excise office of all mills, presses, engines, rollers, stoves, mullers, or spinning-wheels, intended to be used by him about the manufacturing of tobacco, &c. &c. &c.; on pain of forfeiting 50*l.* for every such utensil not entered. See also 58 *G.*3. *c.*65. § 7.

1 & 2 G.4. c.109. Manufacturers of tobacco, being also retailers, to make entry of places to be used by them.

Such places to be surveyed by the proper officer.

Tobacco, &c. to be removed by permit.

Tobacco, &c. found removing without permit, &c. to be forfeited, and manufacturer shall forfeit 100*l.*

By stat. 1 & 2 *G.* 4. *c.* 109. § 1. It is enacted, that after the 10th of *October*, 1821, every manufacturer of tobacco or snuff *who shall retail tobacco or snuff*, shall, in the entry of premises for manufacturing and keeping and retailing tobacco or snuff, specially describe and distinguish the parts and places which he or she shall make use of, or intend to make use of, for laying or keeping his or her stock of manufactured tobacco or snuff *for retail only*, and the shop and shops, place and places from which he or she shall retail or intend to retail the same: and every such retailer, and all such places and shops so entered by any manufacturer of tobacco or snuff, for laying or keeping tobacco or snuff for retail, or retailing tobacco or snuff, and the retail stocks of tobacco or snuff therein, shall be surveyed by the proper officer, and be subject to all the rules and regulations, penalties, and forfeitures, to which *retailers only*, and the entered premises of retailers only of tobacco or snuff, and the stocks of such retailers, are or shall be by law liable; and all tobacco and snuff which shall be retailed or sold by any such retailer from his or her retail stock, shall be first removed to and received by him or her into the places specially entered and distinguished by him or her for laying or keeping tobacco or snuff for retail, and into his or her retail stock, with and under a legal permit; and if any raw or unmanufactured tobacco, tobacco stalks, tobacco stalk flour, returns, or snuff-work, not being in legal transit, and enclosed and secured in the original package and packages thereof, and accompanied by a legal permit, shall be found laid, deposited or kept in any shop or place entered for laying or keeping tobacco or snuff for retail, or for retailing tobacco or snuff; or if any manufactured tobacco or snuff shall be found removing or shall be removed to or received by any dealer or retailer, without being accompanied by a legal permit, from the stock of the manufacturer, or by a legal certificate or permit, from the stock of a dealer or retailer, to the stock of such retailer, or without such permit or certificate being forthwith delivered to the proper officer by such dealer or retailer to whom such tobacco or snuff shall be so permitted or certificated, and who shall receive therewith the tobacco or snuff therein specified; or if any manufacturer of tobacco or snuff shall retail, or deliver or send out by retail any tobacco or snuff, without making such entry, or any tobacco or snuff which shall not be first removed to and received by him or her into some shop or place so entered, and into his or her retail stock of tobacco or snuff, with and under such permit or certificate so delivered to the proper officer, all such tobacco and snuff shall be forfeited, and shall and may be seized by any officer

of excise, and every such manufacturer shall, for every such offence, forfeit the sum of 100*l*.

By stat. 29 *G*.3. *c*.68. § 62. Every such manufacturer and dealer shall cause to be painted or written in large legible characters over the outer door, or in the front, or on some conspicuous part of each such house or place, the words *Manufacturer of, and Dealer in,. Tobacco and Snuff*, or *Tobacco* or *Snuff*, or *Manufacturer of*, or *Dealer in Tobacco and Snuff*, or *Tobacco* or *Snuff*, (as the case may be); on the penalty of 50*l*. 29 G.3. c.68. Certain words to be put up.

§ 63. If any person, who has not made such entry as aforesaid, shall paint or write up the said words, in such manner and place, he shall forfeit 100*l*.

And by stat. 30 *G*. 3. *c*. 40. § 8. No person shall set up or begin any manufactory of tobacco, &c. &c. within five miles of the sea coast, (except in the ports and places aforesaid where tobacco may be imported, or places within three miles thereof; and also except in cities, or the suburbs thereof, and market towns); and no entry thereof shall be of any avail. 30 G.3. c.40. Where only manufactories may be set up.

But by stat. 29 *G*. 3. *c*. 68. § 76. Tobacco and snuff may be manufactured by any unlicensed *Spanish* cutter, or snuff miller at any entered mill, on account of any other licensed manufacturer, provided the same be legally permitted from such other manufacturer, and for the sole purpose of manufacturing or grinding. May be manufactured at entered mills by unlicensed persons.

By stat. 1 & 2 *G*. 4. *c*. 109. § 3. It shall be lawful for any manufacturer of tobacco and snuff to strip from the stalks any tobacco leaf which has not been wetted, without giving to the officer of excise previous notice, and without such stripping being deemed to be a commencement of the manufacture of tobacco or snuff: Provided that every such manufacturer shall, in the notice for commencing the manufacture, mention whether the tobacco leaf specified in such notice and intended to be part of the operation or how much thereof, is leaf stripped from the stalks thereof by such manufacturer, and how much thereof is leaf unstripped, and if such leaf be leaf stripped from the stalks, such stalks shall not be deemed part of the tobacco leaf to be weighed for the operation, but such manufacturer shall have credit in his unmanufactured stock for all such tobacco stalks. 1 & 2 G.4. c. 109. Manufacturer of tobacco and snuff to be at liberty to strip leaf which has not been wetted, without notice. The notice shall specify whether the tobacco leaf is leaf stripped, and how much leaf is unstripped.

§ 4. The word "*Operation*" is used in this act, and shall be construed to mean and express only the quantity of tobacco and other materials, weighed by the officer of excise, and declared by the manufacturer at one time for the manufacture of the tobacco or snuff specified in such declaration. *Operation* of tobacco, what means.

By stat. 29 *G*. 3. *c*. 68. § 77. 95.— 30 *G*. 3. *c*. 40. § 30. Every manufacturer shall give notice in writing to the officers (if in *London* 6, in cities and market towns 12, and elsewhere 24 hours) before he shall begin to strip, spin, or press any tobacco for cutting; or make any tobacco into carrots, or flatten any tobacco stalks for *Spanish*; and shall express therein the weight of each article, and the time he intends to begin; and the officer shall attend accordingly, and he shall begin within one hour of the time so mentioned, and shall proceed without delay; and shall afterwards deliver a declaration in writing to such officer, of the quantity intended to be used for each sort of tobacco, on the penalty of 20*l*. and such notice being void. Notice to be given of beginning to work.

29 G. 3. c. 68. Tobacco not fit for the purpose intended.

By stat. 29 *G.* 3. *c.* 68. § 78, 79. No manufacturer shall be liable to the said penalty, if such tobacco shall afterwards appear to be unfit to be so pressed, spun, or made into carrots according to such declaration; and notice thereof in writing specifying the weight of such tobacco shall be given in 48 hours after delivery of the declaration; and in case the manufacturer within that time in like manner deliver to such officer a like declaration, specifying into what sort of tobacco or snuff it is to be manufactured, and shall in like manner proceed to press for cutting, to spin, to make into carrots, and the like, if it be to be made into snuff.

Weights, &c. of each sort to be declared after manufacturing.

§ 80, 81, 82. Such manufacturer, as soon as the manufacturing is finished, shall deliver to the officer a declaration of the weight of the different sorts of tobacco so manufactured, and the number of the rolls or carrots made, and the weight thereof, and of the tobacco stalks and returns arising from the operation; and shall keep each sort separate for 24 hours, or until an account be taken; on the penalty of 50*l.*

§ 102. Every manufacturer shall keep unmanufactured tobacco, tobacco in operation, and manufactured tobacco, separate from each other, on pain of forfeiting 50*l.*

1 & 2 G. 4. c. 109. Only three operations of cut tobacco to be allowed, and such operations to be finished within a limited time, according to the size of the operation.

By stat. 1 & 2 *G.* 4. *c.* 109. § 6. No manufacturer of tobacco shall have depending, at the same time, more than three operations for the manufacture of cut tobacco, under which denomination all such tobacco shall be kept in stock, permitted, and sent out, whether the same be generally called or known by the name of short cut or shag tobacco; and every such operation, where the weight of tobacco or tobacco and returns declared for such operation shall not exceed 500 pounds weight avoirdupois, shall be finished, and declared by such manufacturer to be finished, before the expiration of seven working days from the date of such declaration; and where the weight so declared shall exceed 500 pounds, such operation shall be finished and declared to be finished, before the expiration of ten working days from the date of such declaration; and every such manufacturer who shall have depending, at one and the same time, more than three operations for the manufacture of cut tobacco, or who shall refuse or neglect to finish, and declare to be finished, any operation for the manufacture of cut tobacco, within the period of time herein-before mentioned, according to the size of such operation, shall for every such offence forfeit the sum of 100*l.*

Penalty, 100*l.* Operation for cut tobacco to be weighed when finished, and the tobacco removed to stock.

§ 7. During the process of any operation for the manufacture of cut tobacco, every such manufacturer shall cause all the tobacco stalks stripped from the tobacco or tobacco and returns weighed and declared for such operation, to be from time to time removed, when stripped, and kept and deposited in bin, cask, chest, box, or parcel, separate from all other tobacco stalks, and ticketed or labelled as the stalks belonging to such operation, and shall not add to or mix any thing therewith, or conceal or make away with any part thereof, until the same have been weighed and taken account of by the proper officer of excise, when the operation is finished; and so soon as any operation for the manufacture

Notice to be given when operation is finished, for the officer to take an account.

of cut tobacco is finished, and within the period herein-before prescribed, according to the weight of such operation, the manufacturer shall give notice and a declaration in writing to the officer, that such operation is finished, specifying the number, date, and original weight thereof, and the weight respectively of such

manufactured cut tobacco, and of the tobacco stalks and returns of such operation; and such officer shall, within 24 hours, or if in a market town within six hours after the receipt of and at the time specified in such notice, attend for that purpose, and such manufacturer shall thereupon produce to such officer all the manufactured tobacco (except such part thereof as shall have been taken therefrom and sent out pending such operation, under the laws in that case made and provided), and the tobacco stalks and returns of such operation; and such officer shall thereupon weigh all such manufactured cut tobacco, tobacco stalks (if any), and returns of such operation, and so soon as the same are weighed to the satisfaction of such officer, such manufacturer shall cause all such manufactured cut tobacco to be removed, and put or placed with his or her stock of manufactured tobacco, and shall also remove the tobacco-stalks (if any), and the returns of such operation, and put or place the same with his or her stock of unmanufactured tobacco, tobacco stalks, and returns, not in operation; and if any such manufacturer shall neglect or refuse to remove from time to time all such tobacco stalks when stripped from the leaf, and keep the same separate, and ticketed or labelled, or shall add any thing to or mix any thing therewith, or conceal or make away with any part thereof, until the proper officer shall, on such operation being finished, have weighed and taken an account of the manufactured cut tobacco, tobacco stalks, and returns of such operation, or shall not, when such operation is finished, and within the period before prescribed, according to the weight of such operation, give such notice and declaration as aforesaid, and produce all the manufactured tobacco, except as aforesaid, tobacco-stalks (if any), and returns of such operation to, and give such officer all the aid and assistance such officer shall require in weighing and taking a true account thereof; or if any such manufacturer shall use any art, device, means, or contrivance, by which such officer shall be hindered, molested, or prevented in weighing the same, or shall be deceived, or such account shall be defeated; or if such manufacturer shall not afterwards remove or cause to be removed and kept as aforesaid, all such manufactured cut tobacco, tobacco stalks, (if any), and returns as aforesaid, all such tobacco, tobacco stalks, and returns shall be forfeited, and may be seized by any officer of excise; and if, on weighing the same, the officer shall find, when such operation is finished or declared to be finished, any greater weight of manufactured cut tobacco, together with the stalks and returns of such operation, than after the rate of 105 pounds for every 100 pounds of the weight of the tobacco or tobacco and returns weighed and declared for such operation, so much of such manufactured tobacco as shall be equal to the weight of such greater increase shall be forfeited, and may be seized by any officer of excise; and every such manufacturer shall for every such offence forfeit the sum of *50l.*: Provided that no such manufacturer shall have or be allowed any credit in his or her manufactured stock for more than the weight of the tobacco or tobacco and returns weighed and declared for such operation, actually manufactured into cut tobacco, and produced to and weighed by the officer, and removed by such manufacturer into his or her manufactured stock of cut tobacco, and the further credit of *5l.* for every 65 pounds of the tobacco or tobacco and

1 & 2 G.4. c.109.

Penalty for not removing the stalks when stripped from the leaf, and keeping them separate, &c. till account is taken; neglecting to give notice; deceiving officer, &c. *50l.* and forfeiture of tobacco, &c.

Credit in stock allowed for cut tobacco.

1 & 2 G.4. c.109.

returns so manufactured; and after the same rate for any less quantity, so as such credit shall not exceed the rate of 105 pounds for every 100 pounds of the tobacco or tobacco and returns weighed and declared for such operation.

Manufacturers of tobacco to have only three operations of roll or carrot, and only two operations of lug tobacco, depending at one time.

§ 8. No manufacturer of tobacco shall have depending, at the same time, more than three operations for the manufacture of roll or carrot tobacco, or more than two operations for the manufacture of lug tobacco; and every such manufacturer shall cause all the tobacco stalks stripped from the leaf or tobacco and returns weighed and declared for such operation, to be from time to time removed and kept and deposited in bin, cask, chest, bag, or parcel, separate from all other tobacco stalks, and ticketed or labelled as tobacco stalks belonging to such operation; and shall not add to or mix any thing therewith, or conceal or make away with any part thereof, until all the rolls, carrots, or boxes made up or to be made up from the tobacco or tobacco and returns of the operation to which such tobacco stalks belong and are part, together with the whole of the returns thereof, have been weighed and taken account of by the proper officer after such operation is declared to be finished; and every such manufacturer shall, before the expiration of 42 days from the date of his or her declaration of any operation for the manufacture of roll, carrot, or lug tobacco, make up the whole number of the rolls, carrots, or boxes to be made up of or from such operation, and shall, upon all such rolls, carrots, or boxes being made up, and within the time aforesaid, deliver to the proper officer a notice and declaration in writing that all such rolls, carrots, or boxes are made up, and that such operation is finished; specifying the number, date, and weight of such operation, and the weight of the tobacco stalks and returns, and the number and weight of such rolls, carrots, or boxes, and such officer shall within 24 hours, or if in a market town, within six hours, after the receipt of such notice and declaration, attend, and such manufacturer shall produce all such rolls, carrots, or boxes, (except such part of such roll tobacco as shall have been taken therefrom, and sent out pending such operation, under the laws in that case made and provided,) to such officer to be weighed and taken account of, together with all the tobacco stalks and returns of such operation, and such officer shall thereupon weigh the same; and such manufacturer shall, after such manufactured rolls, carrots, or boxes, together with the tobacco stalks and returns of the operation have been weighed by the officer, remove all the tobacco stalks and returns of such operation so weighed to, and keep the same with and as part of his or her unmanufactured stock not in operation; and if upon such rolls, carrots, or boxes, together with the tobacco stalks and returns of the operation, being weighed and taken account of, the same shall, when finished or declared to be finished, be found by the officer to weigh more than after the rate of 115 pounds for every 100 pounds weighed and declared for operation, all such excess shall be forfeited, and a weight of such manufactured tobacco equal thereto shall and may be seized by any officer of excise, and every such manufacturer shall forfeit for every such offence the sum of 50*l.*; and if any such manufacturer shall have more than three operations for the manufacture of roll or carrot tobacco, or more than two operations for the manufacture of lug tobacco, depending at the

Notice to be given when operation is finished, for the officer to take an account.

If tobacco be found to weigh more than after the rate of 115lbs. for every 100lbs. declared for operation, the excess shall be forfeited and the manufacturer shall forfeit 50*l.*

same time, or shall not cause all the tobacco stalks stripped from the tobacco or tobacco and returns weighed and declared for any operation for the manufacture of roll, carrot, or lug tobacco, to be from time to time removed and kept and deposited in bin, cask, chest, bag, or parcel, separate from all other tobacco stalks, and ticketed or labelled as aforesaid, or shall add to or mix any thing therewith, or make away with or conceal any part thereof, before all the rolls, carrots, or boxes of tobacco made up or to be made up of or from the operation to which such tobacco stalks belong and are part, together with the whole of the tobacco stalks and returns thereof, have been weighed and taken account of by the proper officer of excise, at the time of such operation being finished, and declared to be finished; or if any such manufacturer shall not, before the expiration of 42 days from the date of his or her declaration for any operation for the manufacture of roll, carrot, or lug tobacco, make up the whole of the rolls, carrots, or boxes, and within such time as aforesaid deliver to the officer such notice and declaration thereof, and that such operation is finished, and produce all the rolls, carrots, or boxes (except as aforesaid), tobacco stalks and returns of such operation, to the proper officer of excise, to be weighed and taken account of, and give to such officer all the aid and assistance that he may require for that purpose; or shall use any means, art, or contrivance to deceive such officer, or hinder, molest, or prevent him from taking such account; or if any such manufacturer shall not cause all the tobacco stalks and returns of such operation, after weighed and taken account of, to be removed to, and kept with and as part of the unmanufactured stock of such manufacturer not in operation, every such manufacturer shall for every such offence forfeit the sum of 100*l.*: Provided always, that no manufacturer of carrot or lug tobacco shall have or be allowed any credit in his or her manufactured stock, for more than for the weight of carrot and lug tobacco respectively, which he or she shall actually bring off manufactured, and shall produce to the officer, and which shall be weighed by him, not exceeding the rate of 115 pounds for every 100 pounds of the tobacco or tobacco and returns weighed and declared for operation, after deducting from such weight, the weight of the tobacco stalks and returns (if any) of such operation; nor shall any manufacturer of roll tobacco have or be allowed any credit in his or her manufactured stock for more than the weight of so much of the tobacco leaf weighed and declared for operation, as shall be spun into roll, and so produced and weighed, and the further credit of 15*l.* for every 65 pounds of such weight of leaf so spun, produced, and weighed, and after the same rate for any less quantity, so as such credit shall not exceed the rate of 115 pounds for every 100 pounds of the tobacco, or tobacco and returns, weighed and declared for operation for roll tobacco.

1 & 2 G.4. c.109. Penalty for having more than the number of operations allowed; for not removing the stripped stalks; keeping them separate, &c.; for neglecting to give notice; for deceiving officer, &c. 100*l.*

Credit in stock for carrot and lug tobacco.

§ 9. Every manufacturer of segars shall be deemed a manufacturer of tobacco; and no manufacturer of tobacco shall have depending, at the same time, more than three operations, or any operation of less weight than 30 pounds of tobacco, or tobacco and returns, for the manufacture of segars; and that every manufacturer of segars shall, in the entry made by him or her of premises for manufacturing tobacco, specify and distinguish some

Manufacturer of segar tobacco to have only three operations depending at one time.

1 & 2 G.4. c.109.

room or place thereof, to be used by him or her for making segars, and which during the manufacture of segars shall not be used by such manufacturer for any other purpose; and every such manufacturer shall cause all the tobacco stalks stripped from the leaf of any tobacco, declared for an operation for the manufacture of segars, to be from time to time removed, as the same are stripped from the leaf, and kept and deposited in such room, in bin, cask, chest, bag, or parcel, separate from all other tobacco stalks, and ticketed or labelled as being the tobacco stalks belonging to such operation, and shall not add to or mix any thing therewith, or conceal or make away with any part thereof, until all the segars made up or to be made up of or from such operation, together with the tobacco stalks and returns, have been weighed and taken an account of by the proper officer; and every such operation shall be finished within 28 days from the date of the declaration for such operation; and when and so soon as any such operation shall be finished, the manufacturer shall give 24 hours' notice, and a declaration thereof in writing, to the proper officer, specifying the date and weight of such operation, and the number of the segars manufactured; and such officer shall attend at the time specified in such notice and declaration, and such manufacturer shall produce all such segars, together with the tobacco stalks and returns of such operation, to such officer, to be weighed and taken an account of, and such officer shall thereupon weigh and take account of the whole of such manufactured segars, and also of the tobacco stalks (if any) and the returns of such tobacco; and so soon as the same are weighed by and to the satisfaction of such officer, such manufacturer shall remove all such segars, and place the same with his or her stock of manufactured tobacco, and shall also remove the tobacco stalks (if any) and returns of such tobacco, and place the same with his or her stock of unmanufactured tobacco, or tobacco stalks and returns not in operation, there to be kept as aforesaid;

Notice to be given when operation is finished, for the officer to take an account.

and if any person manufacturing segars shall begin to manufacture segars without having first made such special entry, and being duly licensed as a manufacturer of tobacco, or shall, whilst any such room or place so entered is used for manufacturing segars, use or suffer such room or place to be used for any other purpose, or shall neglect or refuse to remove and keep all such tobacco stalks, when stripped from the leaf, separate and ticketed or labelled as aforesaid, or shall add any thing to or mix any thing therewith, or conceal or make away with any part thereof, until the proper officer shall have weighed and taken an account of all the segars made up or to be made up of or from such operation, together with the tobacco stalks and returns, or shall not finish and complete every such operation within 28 days from the date of the declaration for such operation as aforesaid; or shall not, when such operation is finished, and within the time aforesaid, give such notice and declaration, specifying such particulars as aforesaid, and produce all such segars, together with the tobacco stalks and returns of such operation, to such officer to be weighed and taken account of, and give such officer all necessary assistance in weighing and taking a true account thereof; or shall use any art, device, means, or contrivance by which such officer shall be hindered, molested, or prevented in weighing the same, or shall be deceived, or such account shall be

Penalty for not making special entry before manufacturing segars; for not removing the stripped stalks and keeping them separate, &c.; for neglecting to give notice; for deceiving officer; for not removing the segars, &c. such segars and tobacco to be forfeited, and the manufacturer for every offence to forfeit 100*l*.

defeated; or if any such manufacturer shall not afterwards remove or cause to be removed and kept as aforesaid, all such segars, tobacco stalks (if any), and the returns of such tobacco as aforesaid, all such segars, tobacco stalks, and returns shall be forfeited, and may be seized by any officer of excise; and if on weighing, the officer shall find any increase in the weight thereof, above the rate of 105 pounds for every 100 pounds of the weight of the tobacco or tobacco and returns weighed and declared for operation, such increase shall be forfeited, and a quantity of such segars equal thereunto may be seized by any officer of excise; and every such manufacturer shall, for every such offence, forfeit the sum of 100*l.*: Provided always, that no manufacturer of segars shall have or be allowed any credit in his or her manufactured stock, for more than the weight of tobacco or tobacco and returns of the operation actually made into segars, and produced to and weighed by the officer, with 5*l.* for every 100 pounds of the tobacco or tobacco and returns weighed and declared for such operation, and so in proportion for any less quantity.

1 & 2 G.4. c.109.

Credit in stock for segars.

§ 5. If before the expiration of any period respectively prescribed by this act, for finishing and declaring to be finished any operation for the manufacture of tobacco, any unforeseen or inevitable cause or accident shall occur, by which any such manufacturer shall unavoidably be prevented from finishing and declaring the same to be finished within such period, and such manufacturer shall forthwith give notice in writing of such cause or accident to his or her surveying officer, specifying therein the nature thereof, and shall give proof to the supervisor of excise in whose district the entered premises of such manufacturer are situate, of such cause or accident, and of the delay thereby occasioned, and shall finish such operation and declare the same to be finished with as much diligence and dispatch as the nature of such cause or accident will allow, no such manufacturer shall incur any forfeiture or penalty by reason of the delay in the performance within the respective period prescribed for that purpose, unavoidably occasioned by such cause or accident.

If operations not completed within the time limited owing to unavoidable accident, of which notice shall be given, no forfeiture or penalty to be incurred.

§ 11. If upon any notice given by any manufacturer of tobacco or snuff under this act, the officer of excise shall attend as required, and at the time specified in such notice, and such manufacturer shall not within one hour after such officer shall be present, begin to do the act specified in such notice, or for which such notice was given; or if any such manufacturer shall previously declare in writing, delivered to such officer, any such notice void, every such notice shall be void, and it shall be lawful for any manufacturer of tobacco or snuff to proceed in any act, requiring the presence only of the officer when done, and which shall be specified in any such notice, if such officer shall not attend; provided that no such manufacturer shall proceed so to do, unless such officer shall not attend for the space of one hour after the expiration of the time specified in such notice for that purpose; and no notice shall be given or declaration made by any manufacturer (except in case of accident), that shall require the attendance of any officer of excise at or upon the entered premises of any such manufacturer, on a *Sunday*, or at any other time, or between any other hours than between six in the morning and eight in the evening; and if any notice shall

Notice to be void if manufacturer shall not proceed within one hour after the officer shall attend.

Manufacturer may proceed if officer do not attend.

No notice to be given but between six in the morning and eight in the evening.

1 & 2 G. 4. c. 109.

be given, or declaration be made (except as aforesaid), the same shall be void.

No manufacturer shall make any cut, roll, or carrot tobacco for exportation on drawback, unless made wholly from tobacco leaf having the stalks stripped therefrom, on penalty of 200*l.* and forfeiture of tobacco.

§ 12. No manufacturer of tobacco shall make, manufacture, or have in his or her possession for exportation, or shall export on drawback, or ship, or give notice for that purpose, any cut, roll, or carrot tobacco, unless wholly made from tobacco leaf having the tobacco stalks stripped and separated therefrom, or from such leaf and returns of tobacco leaf so stripped, and without the stalks thereof; and if any manufacturer of tobacco shall make, manufacture, or have in his or her possession for exportation, or shall give notice to ship, or ship for exportation on drawback, any cut, roll, or carrot tobacco, which shall have been made without the tobacco stalks being first wholly stripped and separated, so that such cut, roll, and carrot tobacco shall have been wholly made from the leaf of tobacco from which the whole of the stalks have been stripped, or from such leaf and returns of tobacco leaf so stripped, the same shall be forfeited, and may be seized by any officer of excise; and such manufacturer, who shall so make, manufacture, or have the same in his or her possession for exportation on drawback, shall for every such offence forfeit the sum of 200*l.*

29 G. 3. c. 68. Tobacco for exportation to have no stalks in.

By stat. 29 *G.* 3. *c.* 68. § 83. If any manufacturer shall make, or have in his possession, any roll or carrot tobacco for exportation, with any tobacco stalks therein, the same shall be forfeited, and may be seized, and he shall also forfeit 50*l.*

No person to cut leaves, &c. in imitation of tobacco.

§ 84. Every person who shall cut any walnut-tree leaves, hop-leaves, sycamore-leaves, or other leaves, herbs, or plants, in imitation of tobacco (not being tobacco-leaves or plants); or shall colour, stain, dye, or cure the same so as to resemble tobacco; or shall mix any such leaves, herbs, or plants with tobacco; or shall sell or expose to sale or have in his possession any such leaves, herbs, or plants so cut, coloured, stained, dyed or cured, or mixed, shall forfeit the same, with the casks and package, which may be seized, and also 200*l.* The same penalty attaches to the causing and procuring.

Manufacturers may keep and use dye.

§ 85.—30 *G.* 3. *c.* 40. § 23. Manufacturers may keep and use dye for staining or dying tobacco, or tobacco stalks. See stats. 1 *G.* 1. *st.* 2. *c.* 46. § 1. 7. 5 *G.* 1. *c.* 11. § 22. *post.* p. 350.

Snuff manufacturers to provide casks, &c.

By stat. 29 *G.* 3. *c.* 68. § 86. Every manufacturer of snuff shall provide proper moveable casks for preparing, laying down, or putting into bins, snuff work and tobacco stalks for flour; and shall place them so as that the officer may conveniently examine and weigh the same, at all times; and shall mark every such cask with a progressive number, and the tare and weight thereof; and shall not lay down any snuff work in any cask not so marked, nor put the same in any bin; on the penalty of 50*l.*

And to give notice when they begin to work.

§ 87. Such manufacturer of snuff shall, before he begins to liquor, damp, strip, press, or cut any tobacco or stalks, &c. or to lay down any snuff work, or tobacco stalks for tobacco stalk flour, give like notice as aforesaid to the officer, and shall in such notice declare the weights thereof respectively, and the number of each particular cask or bin in which the same is intended to be laid down; and such officer shall attend accordingly; and such person shall begin within one hour of the time so mentioned, and shall without delay proceed therein, until the whole is weighed; and shall then deliver an account in writing of the quantity intended

for each sort of snuff or flour; and when put into casks he shall give a like notice, and in the presence of the officer shall affix to each cask a ticket specifying the number of such cask, and the weight of the snuff work, &c. therein, and the time when laid down, and what sort of snuff it is intended for: which ticket shall be signed both by such manufacturer or his servant and the officer; and when the same is intended to be taken out to be ground, like notice shall be given, and the same shall be weighed out in the presence of the officer. And no such manufacturer shall mix snuff work or tobacco stalks for flour of one making with another; on pain of forfeiting for every offence aforesaid 50*l.* 29 G.3. c.68.

§ 88.—30 *G.* 3. *c.* 40. § 9, 10. Provided always, that whilst such snuff-work shall be in cask or bin, and shall afterwards appear to be unfit for the purposes specified in such declaration, or be intended to be manufactured contrary thereto, notice thereof in writing shall be given to the officer within 48 hours after the delivery of such declaration, and a fresh declaration shall be given, specifying the sort it is intended for, and such manufacturer shall proceed therein in manner as aforesaid. 30 G.3. c.40. Snuff work, &c. not fit for the purpose intended.

By stat. 30 *G.* 3. *c.* 40. § 19, 20, 21. *Scotch* snuff and tobacco stalk flour may be manufactured into brown *Scotch* snuff, and tobacco stalk flour into rappee snuff, subject to the regulations aforesaid. And on taking stock, certain credits shall be allowed (as set forth in the act); and if on such taking stock any excess be found, the same shall be forfeited, as brought without an authentic permit, and may be seized. 30 G.3. c.40. Snuff of one sort may be made into another sort.

§ 11, 12. And to snuff work in operation, tobacco, tobacco stalks or flour, or returns of tobacco, may be added once while in cask or bin, or once immediately before the grinding, or once at or during each operation, on giving to the officer, previous to such increase being made, a like notice specifying the cask or bin, and the number thereof, and the time when first laid down, and the time when any increase was made, and the weights of the tobacco, &c. intended to be added. To snuff work in operation, tobacco, &c. may be added.

§ 13. The whole of any parcel of snuff work in cure may be mixed with the whole of any other parcel in cure, although laid down at different times, if the same be mixed in the presence of an officer, to whom notice is to be given as aforesaid. Snuff work in cure may be mixed.

§ 14. If any manufacturer has occasion to supply his customers with manufactured tobacco or snuff from any parcel in operation before the whole is finished, he may, in the presence of an officer, take for the purpose aforesaid any manufactured tobacco or snuff not less than 200lb. from any parcel then in operation. But if taken without conforming to the regulations specified in the act; he shall forfeit 50*l.* 200lb. or above may be taken from tobacco or snuff in operation.

By stat. 29 *G.* 3. *c.* 68. § 89. Every manufacturer of snuff shall diligently manufacture such snuff work and tobacco stalks for flour when taken out of such cask, into snuff, according to the notice given; and when the same is finished he shall deliver to the officer a declaration in writing of the weight of each sort so made, and shall keep the same separate for 24 hours, or until the officer shall have taken an account thereof; on the penalty of 50*l.* 29 G.3. c.68. Snuff work when finished to be kept separate till surveyed.

§ 90. But the same shall not extend to *Scotch* snuff returned directly from the mill; provided at the time the same is taken from the room where deposited, a declaration in writing be delivered to Except Scotch snuff returned from the mill.

29 G.3. c.68. the officer, specifying the weight thereof, and the time when the same was laid down in snuff work.

Store rooms for dried Scotch snuff. § 91, 92. Provided always, that every manufacturer may provide a store-room for keeping dried *Scotch* snuff, with good and sufficient fastenings to be approved of by the surveyors and supervisors of the district; but the same shall have but one door or entrance, which shall be locked up, sealed, and secured by the officer when any *Scotch* snuff shall be therein; wherein may be deposited *Scotch* snuff returned directly from the mill for 6 months, without being taken as part of his stock. And when the same is intended to be taken out of such room, notice shall be given to the survey officer, in six hours if within the limits of the head office of excise, and 12 hours if elsewhere in any city or its suburbs, and 24 hours if elsewhere, who shall attend and open such room, and such snuff shall be taken out in his presence; and shall be kept separate one making from another; on the penalty of *50l.* And if any such manufacturer shall open such store-room, except in the presence of an officer, he shall forfeit *200l.*

1 G.1. st.2. c.46. Adulterating tobacco or snuff. By stat. 1 *G.* 1. *st.* 2. *c.* 46. § 1. Every person who shall cut or cause to be cut any walnut, hop, sycamore, or any other leaves, herbs, plants, or materials (not being tobacco leaves or plants); or shall colour or cure, or cause any such to make the same resemble tobacco for sale; or shall sell or cause to be sold, or agree or offer to sell knowingly the same, mixed or unmixed with tobacco, as tobacco, shall forfeit *5s.* a-pound, half to the king (charges of the prosecution first deducted), and half with full costs to him who shall sue.

1 G.1. st.2. c.46. 5 G.1. c.11. § 7.—5 *G.* 1. *c.* 11. § 22. Every person who shall make, mix, or colour, or cause, &c. any snuff with oaker, umber or other colouring, except water tinged with *Venetian* red only; or shall mix with snuff any fustick or yellow ebony, touchwood, or other wood, or any dirt, sand, or small tobacco sifted from tobacco, or knowingly sell or expose to sale any such, shall forfeit the same, and *3l.* for every pound weight, half to the king, and half to him that shall sue.

1 G.1. st.2. c.46. By stat. 1 *G.* 1. *st.* 2. *c.* 46. § 3. All such leaves, herbs, plants, and materials, so sold, contracted for, or knowingly offered for sale, and all engines, utensils, and tools for working the same, may be searched for and seized, by warrant of three commissioners of the treasury or of the customs.

§ 4. But no house or warehouse shall be opened to search for or seize the same but at seasonable hours, and not without a special warrant from two justices of the peace.

§ 4. And the said materials or engines found and seized within the limits of any port, or within six miles of any port, shall be brought to the next custom-house warehouse; and if at a greater distance from any port, shall be secured by order of two justices at the king's charge, till the cause of such seizure shall be determined at the next, or at farthest, the second quarter sessions after seizure; and the same, after condemnation or recovery by judgment of such sessions, shall be openly burned or destroyed by order of the same, at H. M.'s charge.

§ 5. All servants and labourers employed in manufacturing or knowingly selling such leaves or materials, shall on conviction

before two justices by oath of one witness, be committed to the common gaol or house of correction, to be kept to hard labour (not exceeding) six months. 1 G.1. st.2. c.46.

29 G.3. c.68. Persons mixing fustick, &c. with snuff work, or having the same in their possession.

By stat. 29 *G.* 3. *c.* 68. § 93. If any person shall mix any fustick, or other wood; or any walnut-tree or other leaves, herbs, or plants (other than tobacco); or any earth, clay, or tobacco sand, with any snuff work or snuff; or shall make or colour, or cause, &c. the same with any sort of colouring (water tinged with colour only excepted); he shall forfeit 200*l.* And if any manufacturer or dealer in snuff shall sell, offer, or expose to sale, or have in his entered premises, any fustic, yellow ebony, touchwood, logwood, red or *Guinea* wood, Braziletto or *Jamaica* wood, Nicaragua wood, or Saunders wood; or any walnut-tree, hop, or sycamore leaves; or shall have in his possession any of the aforesaid articles; or any other wood, leaves, herbs, plants, earth, clay, or tobacco sand, mixed with any snuff work or snuff; or such snuff work or snuff coloured (except as aforesaid); he shall forfeit 50*l.*, and the same shall be forfeited and may be seized.

1 & 2 G.4. c.109. Forfeiture of adulterated tobacco or snuff.

By stat. 1 & 2 *G.*4. *c.*109. § 14. No manufacturer of, dealer in, or retailer of tobacco or snuff, shall mix with, or cause, permit, or suffer to be mixed with or amongst any tobacco, manufactured or unmanufactured, tobacco stalks, tobacco stalk flour, returns of tobacco, snuff work or snuff, any substance, material, or thing whatsoever, not being tobacco or snuff, and other than water only, or water tinged with colour or flavoured only; and if any tobacco, manufactured or unmanufactured, tobacco stalks, tobacco stalk flour, returns of tobacco, snuff work or snuff, shall be found in the possession of any such manufacturer, dealer or retailer, or in transit from any such manufacturer, dealer or retailer, or other person, to any other person, mixed with any substance, material or thing, not being tobacco or snuff, and other than water only, or water tinged with colour or flavoured only, or amongst which any substance, material or thing, not being tobacco or snuff, and other than water only, or water tinged with colour or flavoured only, has been put, all such tobacco, tobacco stalks, tobacco stalk flour, returns, snuff-work and snuff, shall be forfeited, and may be seized by any officer of excise; and if any manufactured tobacco or tobacco stalk flour, in the possession of any manufacturer of, dealer in, or retailer of tobacco or snuff, shall be found, upon any analysis thereof, to contain a greater weight of any substance, material or thing, not being tobacco, and other than water only, or water tinged with colour or flavoured only, than two *per centum* of the weight of the manufactured tobacco or tobacco stalk flour under analysis; or if any snuff in the possession of any manufacturer of or dealer in or retailer of tobacco or snuff, shall be found, upon any analysis thereof, to contain a greater weight of any substance, material or thing, not being snuff, and other than water only, or water tinged with colour or flavoured only, than four *per cent.* of the weight of the snuff under analysis, such material, article or thing, not being in such case tobacco or snuff, and being other than water only, or water tinged with colour or flavoured only, shall be deemed to have been unlawfully added and mixed with such manufactured tobacco, tobacco stalk flour, or snuff, by the person in whose possession such manufactured tobacco, tobacco stalk flour, or snuff shall be found; and all such manu-

Allowance of weight of any substance in tobacco other than water.

1 & 2 G. 4. c. 109.

factured tobacco, tobacco stalk flour, and snuff shall be forfeited, and may be seized by any officer of excise; and every manufacturer of, dealer in, and retailer of tobacco or snuff, in whose possession any such adulterated tobacco, tobacco stalks, tobacco stalk flour, returns of tobacco, snuff work or snuff, shall be found, or who shall commit, or cause to be committed, any such offence, shall forfeit for each and every such offence the sum of 100*l.* over and above all other penalties and forfeitures.

30 G. 3. c. 40. Snuff completely finished may be liquored.

By stat. 30 *G.* 3. *c.* 40. § 15, 16, 17. Any manufacturer of *British* rappee, *Scotch* or brown *Scotch* snuff completely finished, and of which an account has been taken by the officer, may liquor or damp the same before mixing with snuff of a different making, so as the weight exceed not the legal credit; and if such manufacturer shall intend to liquor or damp snuff for which the legal credit has not been received, he shall give notice thereof to the officer, specifying the kind, weight, and quantity (and other particulars in the act stated): But no snuff shall be liquored in less parcels than 200lb. nor one making in more than four different parcels.

§ 18. Snuff for which such allowance shall have been made, shall be kept separate from all other snuff, and shall be shown to the officer on demand; on the penalty of 20*l.*

29 G. 3. c. 68. An account to be kept of mixed tobacco or snuff sold or sent out.

By stat. 29 *G.* 3. *c.* 68. § 94. Every manufacturer and dealer who shall mix *Spanish* with short-cut tobacco, or any tobacco stalk flour with *British* or foreign snuff, or any *British* rappee, *Scotch*, or brown *Scotch* snuff, the one with any other of them, or with any kind of foreign snuff, shall every day enter into a book or paper the quantity sold, sent out, or consumed of 2lb. or upwards, and the gross weight thereof, and the gross weight of the tobacco stalk flour, and the time when mixed; on pain of forfeiting 50*l.*

Manufacturing tobacco or snuff in unentered places.

§ 96. When any officer shall discover that the manufacturing of tobacco or snuff is carried on in any unentered place, and at the same time shall discover therein any person knowingly assisting, or any ways concerned in carrying on the same, every such person shall forfeit 30*l.* over and above all penalties and forfeitures that the proprietor thereof shall be liable to; and such officer or his assistant, may stop and arrest such person, and convey him before a justice, who, on his confession or the oath of one witness, may convict such person so discovered, who shall immediately pay the said penalty to such officer or person who brought him; and if not so paid, such justice shall commit him to the house of correction to hard labour for six months from the day of conviction, or until the said penalty be paid. And for a second offence, he shall forfeit 60*l.*, which if not paid in manner aforesaid, he shall be committed in like manner for one year, or until such penalty be paid.

Officers may enter and take stock.

§ 97, 98. The officers of excise, (at any time between five in the morning and eleven in the evening, with or without a constable, or other officer of the peace, and between eleven in the evening and five in the morning with a constable or other peace officer), may enter into any house or place belonging to or made use of by any manufacturer or dealer, and take an account of the stock found therein; and shall give credit (as particularly set forth in the act). And if at any time any excess in stock shall be found, the same shall be deemed and taken to be brought in without notice and without permit.

§ 99. Every manufacturer and dealer shall keep sufficient scales and weights for the use of the officers, on the penalty of 100*l.*; and if any such person shall, in weighing, use any art or device to prevent such officer from taking a true weight of such tobacco, &c. he shall forfeit 200*l.*, together with such scales and weights which may be seized. 29 G.3. c.68. Scales and weights to be provided.

§ 100. And every such manufacturer and dealer shall, with a sufficient number of his servants, assist such officer in taking such account of stock, on pain of forfeiting 50*l.* And to assist the officers.

§ 101. But no officer shall weigh any tobacco-stalks, or snuff-work, whilst actually in the operation of manufacture; except snuff-work intended to be sent out or received by permit. Not to be weighed whilst in operation.

§ 102. And unmanufactured tobacco, tobacco in the state of operation, and manufactured tobacco, shall be kept separate from each other, on the penalty of 50*l.* To be kept separate.

See stat. 1 & 2 *G.*4. *c.*109. § 7, 8, & 9. *ante*, pp. 342—347.

By stat. 29 *G.*3. *c.*68. § 103. The officers shall be permitted to take samples of tobacco or snuff, &c. in the possession of any manufacturer or dealer, paying for the same (if demanded) the value or usual price, on the penalty of 100*l.* upon refusal. Officers may take samples.

§ 104, 105. Every manufacturer and dealer shall, in a book or paper, to be furnished by the officers, on demand made, keep an account of all tobacco, &c. and snuffs which he shall have sold, sent out, or consumed the preceding day, in quantities of 4 lb. or upwards of tobacco, &c. and 2 lb. or upwards of snuffs; and also another book or paper in like manner, if under 4 lb. of tobacco, &c. or 2 lb. of snuffs: but no such person shall have more than one such book or paper of each sort at the same time, which is to be returned to the officer, if in *London*, or any city or market town, every six weeks, elsewhere every six months, or when the same is filled up, or demanded, and shall be verified on oath. And such books and papers shall lie open for the inspection of the officer, and shall be made up at his request, on the penalty of 100*l.* for every such offence. An account to be kept of the quantity daily sold.

By stat. 53 *G.*3. *c.*88. § 1. No verification on oath, as mentioned in stat. 29 *G.*3. *c.* 68. § 105. shall be required; and when any of the books or papers therein mentioned shall be returned to the officer, the truth of the entries therein shall be verified upon the declaration in writing of, and subscribed by the manufacturer of or dealer in tobacco or snuff, in the presence of such officer; and if any manufacturer of, or dealer in tobacco or snuff, shall neglect or refuse to verify upon his declaration the truth of the entries made in any such book or paper, or to subscribe the declaration, or shall make or subscribe a false declaration, he shall forfeit 100*l.* 53 G.3. c.88. Verification on oath not required, but a declaration to be made instead.

§ 2. Every manufacturer of, and dealer in tobacco and snuff, shall, on demand by the officer of excise under whose survey he shall then be, enter into the said book, or on such paper, the quantities of the said commodities, which he is by the act 29 *G.*3. *c.* 68. § 94. and 104. required to enter; and shall immediately afterwards, if demanded by such officer, return such book or paper to him; and the truth of the entries shall be verified upon declaration as aforesaid, under the penalty of 100*l.* for every neglect or refusal. Dealers to make entries in books on being required by excise officer.

By stat. 29 *G.*3. *c.* 68. § 106. If any officer shall discover any increase in such stock not legally accounted for, the same shall 29 G.3. c.68. Unfair increase

29 G. 3. c. 68.

in stock to be forfeited.

be deemed and taken to be made by a commodity for which no duty has been paid, and privately brought in without permit; and such increase shall be forfeited, and may be seized; and the person in whose stock such increase shall be found, shall also forfeit 20*l*.

1 & 2 G. 4. c. 109.

Supervisors and other officers of equal or superior rank, to weigh all tobacco in possession of any manufacturer of tobacco or snuff.

By stat. 1 & 2 *G*. 4. c. 109. § 13. It shall be lawful for any supervisor, or other officer of excise of equal or superior rank, but in the presence and with the approbation of the collector or general surveyor of excise, if in a town in which such a collector or general surveyor is resident, and such collector or general surveyor be summoned and required by such manufacturer to attend for that purpose, at any time, to weigh all or any part or parcel of all the tobacco, tobacco stalks, tobacco stalk flour, returns, snuff-work, and snuff, of any manufacturer, whether the same or any part or parcel thereof be manufactured or unmanufactured, or is in or under any process of manufacture (except snuff-work between the time of being put into process of cure, and the taking out any part for drying or grinding the same); and if upon any such weighing, such supervisor or other officer shall find in the possession of any manufacturer any greater weight of any manufactured tobacco, tobacco stalk flour, or snuff, or any unmanufactured tobacco, tobacco stalks or returns (not being part of any depending operation), than the credit to which such manufacturer shall be at that time entitled, such greater weight of manufactured tobacco, tobacco stalk flour or snuff, or unmanufactured tobacco, tobacco stalks, or returns respectively, shall be forfeited, and may be seized by any officer of excise, and every such manufacturer shall, for every such offence, forfeit the sum of 100*l*.; and if any such supervisor or other officer shall upon any such weighing find any such tobacco, tobacco stalks, tobacco stalk flour, returns, snuff-work or snuff, or any part or parcel thereof, to be of greater weight than shall be accounted for by such manufacturer by the water added thereto for the purpose of the manufacture thereof, every such supervisor or other officer shall make thereupon such full and particular examination, not only of such operation on which such greater weight shall be found, and not accounted for as aforesaid, but of all and every other operation and operations (if any) for the manufacture of tobacco or snuff of the same denomination then depending, and of all the circumstances relating thereto, as he or they shall think fit, or as he or they may be thereupon requested to make by any such manufacturer; and to take from as many parts and parcels of such tobacco, tobacco stalks, tobacco stalk flour, returns, snuff-work and snuff, as he shall think fit, any quantity as a sample thereof, not exceeding four pounds weight from each parcel, paying such manufacturer at the current price of unmanufactured tobacco, including the duty thereon; and if upon weighing all the tobacco, tobacco stalks, tobacco stalk flour, returns, snuff-work and snuff, under any process for manufacture, and which such manufacturer shall then shew to such supervisor or other officer, and request him to weigh and examine as aforesaid, the same shall be found to be together of greater weight than shall be accounted for by such manufacturer, every such manufacturer shall, for every such offence forfeit the sum of 100*l*.; and if any manufacturer shall obstruct or hinder any supervisor or other officer from weighing or taking account of all his or her tobacco, tobacco stalks,

If the weight is beyond the credit, the excess shall be forfeited, and the manufacturer shall forfeit 100*l*.

If in weighing tobacco in process for manufacture greater weight shall be found than accounted for by the manufacturer, he shall forfeit 100*l*.

Penalty for obstructing officer, &c. 200*l*.

tobacco stalk flour, returns, snuff-work and snuff, or of any part or parcel thereof (except such snuff-work as aforesaid), or examining the state or condition thereof, or taking any such sample, or shall not give to such supervisor or other officer all such aid and assistance as he may require in or for any such weighing or taking any such account, or shall use any art, device, or contrivance, by which any such supervisor or other officer shall be hindered, obstructed, deceived, or defeated therein; or if any such manufacturer shall, after any supervisor or other officer shall have begun, or expressed or signified to such manufacturer, his servant or workman, his intention to begin to weigh or take an account of any tobacco, tobacco stalks, tobacco stalk flour, returns, snuff-work or snuff, or any part or parcel thereof as aforesaid, remove or conceal any part thereof, or make any alteration or change therein, by which the weight may be lessened or increased, or the weighing and taking an account thereof may be rendered imperfect or more difficult, every such manufacturer shall, for every such offence, forfeit the sum of 200*l.* 1 & 2 G. 4. c. 109.

By stat. 29 *G.* 3. *c.* 68. § 107, 108. But *Scotch* snuff in the custody of a manufacturer or dealer, not having gained more than 5 lb. in the 100 lb. by the moisture of the air, shall be deemed a fair commodity, and such manufacturer shall have credit for the same in stock, and may remove the same by permit; and the manufacturer and dealer shall keep such snuff separate from all other snuff, and shew the same to the officer upon demand, on the penalty of 20*l.* 29 G. 3. c. 68. Scotch snuff not having gained more than 5 lb. in 100 lb.

§ 109. If any manufacturer shall remove any tobacco or snuff out of his entered house or place before the same has been weighed and taken an account of by the officer, or shall hide or conceal the same from the view of such officer, he shall forfeit 50*l.* Tobacco or snuff not to be removed before weighing.

§ 110. And no tobacco (except returns) of 4 lb. and upwards, nor snuff of 2 lb. and upwards, nor any tobacco stalks, *Spanish*, returns of tobacco, tobacco stalks for flour, snuff-work, or tobacco stalk flour exceeding 200 lb., shall be removed by land or water without a permit, on pain of forfeiting the same, with the casks or other packages, and also the horses, cattle, boats, barges, and carriages used in conveying the same, which may be seized by any officers of customs or excise. Not without a permit.

§ 111, 112. The officers of excise, on request, shall grant permits, wherein shall be limited the time for such removal; and distinguishing the weight, kind, according to the denominations in the request-note, and the name of the person to whom, and place to which to be sent; and whether by land or water, and by what mode of conveyance; and if the goods permitted shall not be delivered and received within the time so limited, the same shall be deemed and taken to be removed without permit. Officers to grant permits.

But by stat. 30 *G.* 3. *c.* 40. § 29. No permit shall be granted or be valid for the removal of any snuff-work from one part of the kingdom to another, except from the entered premises of a manufacturer of snuff where the same was laid down, to the mill for the purpose of grinding, on pain of forfeiture thereof, together with the horses, cattle, boats, barges, and carriages used in the removal thereof, which may be seized. 30 G. 3. c. 40. Exceptions.

And by stat. 29 *G.* 3. *c.* 68. § 113, 114. No such permit shall be granted or be valid, unless a request-note be sent from such manufacturer or dealer containing the particulars specified in the act, 29 G. 3. c. 68. Request-notes to be given.

29 G. 3. c. 68.

Permits for removing unmanufactured tobacco.

and such permit correspond with the request-note; and if for removing unmanufactured tobacco (other than samples), except the same be in the original package, and be removed according to the regulations specified in the act (for which see this section in the act itself). And all tobacco, &c. removed contrary thereto shall be forfeited, together with the casks and package, and the horses, cattle, boats, barges, and carriages used in the removal thereof, which may be seized.

30 G. 3. c. 40. Permit for removing to and from mills.

By 30 *G.* 3. *c.* 40. § 25. 28. Permits may be granted for the removal of any unmanufactured tobacco in any quantity not less than 200 lb. in any package whatsoever from the entered premises of any manufacturer to any mill to be manufactured, and back to such entered premises.

§ 27. And every manufacturer of tobacco or snuff may manufacture their tobacco, tobacco stalks, snuff-work, and returns of tobacco, at any entered mill, and may remove the same by permit to and from such mill.

29 G. 3. c. 68. Tobacco may be finished or snuff dried at mills.

By 29 *G.* 3. *c.* 68. § 115. Nothing herein shall extend to prevent any manufacturer from stoving or finishing tobacco, or drying snuff-work at any cutting mill, or snuff mill, provided the officer be allowed to weigh, and take an account thereof after such stoving, finishing, or drying.

Permits when not used to be returned.

§ 116. Where any permit shall be granted for the removal of any tobacco, &c. or snuff, and the same shall not be removed agreeably thereto, such permit shall be returned before the expiration of the time limited for such removal; on forfeiture of treble the value of such goods; and where such permit shall not be so returned as aforesaid, and on taking stock a decrease does not appear to answer the contents of such permit, a like quantity to that permitted to be removed shall be forfeited, and may be seized.

Manufacturer not licensed as a dealer.

§ 117. No manufacturer, unless also licensed as a dealer, shall have a permit for, or shall sell or send out any manufactured tobacco, *Spanish*, or returns of tobacco, in a less quantity than 4 lb., nor snuff than 2 lb., on the penalty of 20*l.*

No tobacco, &c. to be taken in without a permit.

§ 118. No tobacco, &c. or snuff shall be brought into any house or place made use of by a manufacturer or dealer without a permit, and also notice thereof shall be first given to the officer, on pain of forfeiting the same, together with the casks and package, which may be seized, and such manufacturer or dealer shall also forfeit treble the value thereof, to be estimated according to the highest price. See stat. 1 & 2 *G.* 4. c. 109. § 1. *ante*, p. 340.

1 & 2 G. 4. c. 109. Manufactured, manufacturing, and unmanufactured stock of tobacco, to be kept separate, and to be ticketed or labelled.

By stat. 1 & 2 *G.* 4. *c.* 109. § 10. Every manufacturer of tobacco or snuff shall keep his or her respective stocks and packages of tobacco, tobacco stalks, tobacco stalk flour, returns, and snuff, not being part of any depending operation, according to their several denominations and descriptions, separate from each other, and in the places entered for that purpose (if any places shall be so specially entered), and shall also keep every operation for the manufacture of tobacco or snuff separate from and unmixed with every other operation for the manufacture of tobacco or snuff, and from all tobacco, tobacco stalks, tobacco stalk flour, returns, snuff-work, and snuff, not being part of such operation; and shall upon every bin, cask, box, chest, bag, or parcel of any tobacco, tobacco stalks, tobacco stalk flour, returns, snuff-work and snuff, not being part of any depend-

ing operation, mark, write, or print, or fix and attach, and continue fixed and attached, a ticket or label, on which shall be marked, painted, written, or printed, in distinct and legible numbers and letters, the denomination or description of the contents thereof, and adding to such denomination when the same is manufactured, the words *manufactured stock*; and shall hang up, and continue to be hung up, conspicuously upon some wall or door near to the place where any operation is depending and in process of manufacture, a board, ticket, or label, on which shall be painted, written, or printed, in distinct and legible numbers and letters, the number, date, and size of such operation then there depending, and the particular tobacco or snuff for which the same is there in process of manufacture; and every such manufacturer shall, at the request of any officer of excise, point out, produce, and shew to him all and every part of his or her tobacco stalk flour, and manufactured stocks of tobacco and snuff respectively, and of his or her unmanufactured stocks, not being part of any depending operation, and also the tobacco, tobacco stalks, returns, tobacco stalk flour, snuff-work, and snuff weighed and declared for any operation, and the whole and each part of every operation for the manufacture of tobacco or snuff then depending in such manufactory; and if any such manufacturer shall refuse or neglect to mark, paint, write, or print on and distinguish every such bin, cask, box, chest, bag, or parcel and operation, or shall falsely or untruly distinguish any such bin, cask, box, chest, bag, or parcel, and operation as aforesaid, and refuse or neglect, on the request of any officer of excise, to point out, produce, and shew to him all and every stock and particulars as aforesaid, all the tobacco, tobacco stalks, tobacco stalk flour, returns, snuff-work, and snuff contained in any such undistinguished or falsely distinguished or concealed bin, cask, box, chest, bag, and parcel, together with the package thereof, shall be forfeited, and shall and may be seized by any officer of excise; and every such manufacturer so refusing or neglecting to point out, produce, and shew to any officer of excise making such request, all and every such stock and particulars as aforesaid, shall for every such offence forfeit the sum of 100*l.*

1 & 2 G. 4. c. 109.

Penalty for neglecting to distinguish the tobacco, and to shew the stock to the officer, &c.

By stat. 29 *G.* 3. *c.* 68. § 119. No tobacco, &c. or snuff shall be removed from any place without the limits of the bills of mortality, or excise office in *London*, to any place within those limits; nor from any place without the limits of the ports hereinbefore enumerated to any place within, or within two miles of those limits; on forfeiture thereof, with the casks and packages, and also the vessels and boats, and the horses, cattle, and carriages employed in removing the same, which may be seized.

29 G. 3. c. 68. Removing to London, or the parts aforesaid.

§ 121. No *Spanish* manufactured by any *Spanish* cutter from tobacco stalks, received by him accompanied with a legal permit from any other manufacturer of tobacco for the purpose only of manufacturing the same into *Spanish*, for or on account of such other manufacturer; *nor* any cut tobacco, cut by any cutter from tobacco, &c. (as before); *nor* any tobacco stalk flour ground by any snuff miller from tobacco stalks received, &c. (as before); *nor* any snuff ground by any snuff miller from any snuff-work received &c. (as before); *nor* any hogshead, &c. or package containing any such *Spanish*, &c. or the vessel, boat, &c. &c. employed in re-

29 G. 3. c. 68. moving the same, shall be forfeited by reason of the return of any such *Spanish*, &c. by any such *Spanish* cutter or snuff miller, from his entered mill not within the limits of the weekly bills, or of the chief office of excise, or from any place not within the limits of the said first-mentioned ports, to the entered premises whence received, situate as aforesaid, or within two miles of the said ports, provided the said *Spanish*, &c. be accompanied with a permit according to this act.

§ 122. Provided also, that any manufacturer may send for sale, by permit, snuff manufactured by him, from any part of the kingdom to any other part.

30 G. 3. c. 40. By stat. 30 *G.* 3. *c.* 40. § 26. Tobacco stalks stripped from the leaf may be removed by permit from any entered premises out of the limits of the bills of mortality to any place within those limits, subject to the regulations in the aforesaid act and this act specified.

29 G. 3. c. 68. Tobacco or snuff may be returned with a permit. By stat. 29 *G.* 3. *c.* 68. § 122. Any manufacturer or dealer who hath received into his stock by permit any tobacco or snuff, may return the same within 48 hours to the person from whom he received it, under certain regulations. But if found returned, or returning without permit, or shall not be the same identical tobacco or snuff which had been received, without any addition to, subtraction from, or alteration; the same shall be forfeited, with the casks and package, which may be seized by officers of customs or excise, and the person who shall return the same shall forfeit 50*l.*

Not to be removed but during certain hours, except by common carriers. § 123. If any tobacco of 4lb. or upwards, or snuff of 2lb. or upwards, or any tobacco stalks, &c. shall be found removing, unless between 7 in the morning and 5 in the evening from 29th *Sept.* to 25th *March*, and between 5 in the morning and 7 in the evening from 25th *March* to 29th *Sept.* (except by a common carrier or vessel usually travelling or navigating out of these hours,) the same shall be forfeited, with the casks and package, and the cattle, carriages, and vessels made use of in conveying the same, which may be seized by any officer of customs or excise, whether the same be accompanied with a permit or not.

48 G. 3. c. 84. Offering tobacco, &c. to sale without a permit, or hawkers with one. By stat. 48 *G.* 3. *c.* 84. § 7. If any person shall offer for sale tea, brandy, rum, geneva, or other foreign spirits, tobacco or snuff, not being licensed to deal therein, and not having a permit for the same, or if any hawker, pedlar, petty chapman, or other trading person going from town to town, or to other men's houses, and trading on foot, or with horses or other cattle or otherwise, shall offer for sale any such goods, although he have a permit for the same, it shall be lawful for the person to whom the same shall be offered, to stop, arrest, and detain the person so offering, and to seize such goods, and to carry them to the next warehouse for the customs or excise, and to carry the person before a justice of peace, who may require him to enter into recognizance, as directed in stat. 45 *G.* 3. *c.* 121., and he shall be subject to the provisions in the said act; and if the offender be a subject of H. M. and a seaman, and capable of serving in the navy, may send him to some officer of the impress service, to be dealt with according to stat. 47 *G.* 3. *sess.* 2. *c.* 66., or be by such justice committed to prison, and prosecuted for the penalties incurred for such offence; and such goods may be prosecuted in the name of the person who seized them, as if seized by an officer of customs or

excise; and after condemnation of the goods, and commitment of the offender, the person who seized them shall be entitled to 5*l.*, if one moiety of the value fixed as in the said act of 47 *G.* 3. shall not exceed that sum, and if a moiety shall exceed 5*l.* then a moiety of such value; which the commissioners of customs and excise are to cause to be paid; and the person so arresting shall also be entitled to such further reward as is given to any officer or non-commissioned officer of the army, navy, or marines, for arresting offenders. 48 G.3. c.84.

By stat. 1 & 2 *G.* 4. *c.* 109. § 2. Every person who shall deal in or retail, or intend and make entry to deal in or retail tobacco or snuff, shall, upon demand, receive from the proper officer of excise, a book or books for the purposes hereinafter mentioned, and to be kept by every such dealer or retailer in some public and open part of his entered shop or premises, and no tobacco or snuff of any weight *not less than one pound*, or which shall *not exceed ten pounds*, shall be sold, sent out, or delivered by any dealer in or retailer to any person whatsoever, without a certificate filled up and cut out progressively from the printed forms of such certificates contained in such book, signed by such dealer or retailer, or some person on his behalf, certifying the date thereof, the quantity, quality, denomination, or sort, or kind, when sent out on order, and to whom sold, and from whose stock delivered; which certificate shall be firmly and permanently pasted on the outside cover or wrapper of such parcel or weight of tobacco or snuff as shall be specified in such certificate; and the dealer or retailer selling, sending out, or delivering any tobacco or snuff of any weight not less than one pound, or exceeding ten pounds, shall at the same time make a correspondent entry thereof, containing the same particulars, in such book as aforesaid (and that such tobacco or snuff when not sent out on order was sold and delivered to the purchaser on their retail premises); and such book, with such entries so made therein, shall at all times from the hour of seven of the clock in the morning until the hour of eight of the clock in the evening, lie open and exposed in the entered premises of such dealer or retailer, to the perusal of any officer of excise, and shall be delivered and given up by such dealer or retailer, to any officer of excise, upon demand; and if any dealer or retailer shall at any one time retail or sell, send out or deliver, from his or her stock, any weight or quantity of tobacco or snuff not less than one pound, and which shall not exceed ten pounds, without being accompanied by such certificate pasted thereon as aforesaid, or without making such entry, or shall convey away or conceal any such book, or cancel, obliterate, destroy, or tear out any leaf therefrom, or entry therein, or shall make any false entry therein, or shall oppose, molest, obstruct, or hinder any officer of excise in inspecting any such book or any such entry therein, or shall at any time neglect or refuse, when required to deliver or give up to any officer such book, every person so offending shall for every such offence forfeit the sum of 50*l.*, and all such manufactured tobacco and snuff so retailed or sent out shall be forfeited, and may be seized by any officer of excise; and the person or persons removing, carrying, or conveying the same, or who shall be or shall have been employed or concerned, or aiding or assisting therein, or in whose custody the same shall be found, shall forfeit the sum of 50*l.*:

1 & 2 G.4. c.109.
Retailers of tobacco or snuff to receive from the officer of excise books containing certificates, to be filled up and sent out with every quantity of tobacco or snuff sold, of any weight not less than 1lb. or not exceeding 10 lbs.

Books subject to the inspection of the officer.

Penalty for sending out such tobacco and snuff without certificate, neglecting to make entry in the book, obstructing officer, &c., 50*l.* and articles forfeited.

Persons assisting to forfeit 50*l.*

1 & 2 G. 4. c. 109.

Tobacco or snuff exceeding 10 lb. to be accompanied with a permit.

Provided that every dealer or retailer shall send out every quantity of tobacco or snuff exceeding ten pounds at one time, accompanied with a legal permit, and not with or under such certificate, on pain of forfeiting all such tobacco and snuff, which may be seized by any officer of excise.

Forging permits.

By stat. 29 *G.* 3. *c.* 68. § 125. If any person shall counterfeit or forge any permit, he shall forfeit 500*l.*

Obstructing officers.

§ 149. If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this or any other act; or shall rescue any such goods which have been seized; or any vessel, horses, cattle, or carriages which have been forfeited, and for which no particular penalty is provided; he shall forfeit 200*l.* for each offence.

Offering bribes.

§ 150. If any person shall give or offer any bribe, recompence, or reward to any officer to prevent him doing his duty, whether the same be accepted or not, he shall forfeit 500*l.*

Entry to be made before landing.

§ 152. No tobacco, &c. or snuff shall be landed, without first making entry thereof with the officers of the customs, on forfeiture thereof, with the casks and package.

Officers may search suspected places.

§ 153. If any officer of excise shall have cause to suspect that any tobacco, &c. or snuff, which shall have been imported contrary to this act, or forfeited by this or any other act, is deposited, lodged, hid, or concealed, if within *London* or *Westminster*, or the limits of the chief office, upon oath made before two commissioners, elsewhere upon oath made before one justice, setting forth the ground of his suspicion, such commissioners or justice may by warrant authorize such officer by day or night, but if in the night in the presence of a constable or other peace-officer, to enter into such suspected place, and to seize and carry away all such tobacco, &c. or snuff which shall be there found, together with the casks and package containing the same. And if any person shall obstruct or hinder any such officer so authorized, or person assisting him in the execution of such warrant, he shall forfeit 100*l.*

[Tobacco and snuff, taken as prize, are subjected to the regulations of this act, by 43 *G.* 3. *c.* 134. § 5.]

No manufacturer or dealer to act as a magistrate.

§ 154. No manufacturer or dealer in tobacco or snuff, or person anywise interested or concerned therein, shall act as a magistrate in the execution of any act relating to tobacco or snuff; and all acts done by such person shall be utterly null and void.

59 G. 3. c. 53. Powers of former acts to extend to this act.

By stat. 59 *G.* 3. *c.* 53. § 28. The powers of 12 *C.* 2. *c.* 24. and of any other law respecting the excise (except hereby altered) are to be exercised in levying the excise duties thereby imposed.

1 & 2 G. 4. c. 109. not to alter former acts.

By stat. 1 & 2 *G.* 4. *c.* 109. § 15. Nothing in this act shall repeal or alter any act in force before 10th *October* 1821, relating to the duties on tobacco or snuff, except so far as hereby repealed, altered, or controlled.

[And there are several regulations made and drawbacks allowed on the *Exportation* of tobacco, &c., for which see the respective acts.]

Importing tobacco stalks.

By stats. 12 *G.* 1. *c.* 28. § 13. — 5 *G.* 3. *c.* 43. § 4. 6. — 8 *G.* 1. *c.* 18. § 16. If any tobacco stalks or stems stript from the leaf shall be imported, the same shall be forfeited and burned; and the officer seizing the same shall be allowed 1*d.* per pound; and every person who shall be assisting or otherwise concerned in unshipping the same, or to whose hands they shall knowingly come after un-

shipping, shall forfeit treble value, together with the vessels, bags, casks, or other things wherein the same are contained, and the horses, cattle, carts, and other carriages made use of in removing the same; half to the king, and half to such officer of the customs who shall seize, inform, or sue for the same. 12 G.1. c.28. &c. &c.

Power of the justices.

By stats. 8 *G*.1. *c*.18. § 16.—5 *G*.3. *c*.43. § 6.—29 *G*.3. *c*.68. § 156. All seizures of vessels or boats of 15 tons or under, and of horses or other cattle and carriages, by virtue of any act relating to the customs, may be prosecuted, heard, and determined before two justices residing near where the seizure was made.

29 G.3. c.68. &c. 1 & 2 G.4. c.109.

And by 29 *G*.3. *c*.68. § 157.—30 *G*.3. *c*.40. § 31.—43 *G*. 3. *c*.69. § 4.—53 *G*. 3. *c*.88. § 3.—59 *G*.3. *c*.53. § 27.—59 *G*.3. *c*.74. § 5.—1 & 2 *G*.4. *c*.109. § 16. All penalties and forfeitures in the excise may be sued for, levied, and mitigated as by the laws of excise [*ante*, § III.], or in the courts at *Westminster*, half to the king, and half to him who shall sue (unless otherwise particularly directed.)

52 G.3. c.159

By stat. 52 *G*.3. *c*. 159. Tobacco (and also liquors) derelict are subject to the duties of excise.

Regulations observed for securing duties on tobacco, or foreign spirits, derelict. See ante, p. 261. (16.)

By stat. 52 *G*. 3. *c*. 159. § 2. Every person bringing into this kingdom, or finding on the coast of this kingdom, any foreign liquors or tobacco derelict, jetsam, flotsam, lagan, or wreck, in respect whereof any duty of customs or excise is imposed, shall, within 24 hours after he shall have so brought, &c. the same, if the same be found on land, or within 24 hours next after the same shall have been landed, if found at sea, give notice thereof to the next custom-house or excise office, or to some officer of customs or excise, specifying the place where the same are deposited; and the proper officers shall forthwith take a particular account of such liquors or tobacco, and shall demand of the person in whose possession they may be, or who shall have found or brought to land the same, the duties of customs and excise due in respect thereof; and in case the same shall not on such demand be paid, the said officer shall cause such liquors or tobacco to be lodged and deposited in a warehouse, under H. M.'s lock, until the duties shall be paid, or until they shall be sold; and if any person shall bring into this kingdom, or find or discover on the coasts of this kingdom, any foreign liquors or tobacco derelict, jetsam, flotsam, lagan, or wreck, in respect whereof any duty is imposed, and shall not give such notice as aforesaid, he shall forfeit 100*l*.; and if any person shall remove, open, or alter in quantity or quality, or cause to be removed, &c., or aid or assist in the removing, &c. any such liquors or tobacco, or break, sever, or destroy, or cause to be broken, &c. or aid or assist in the breaking, &c. any of the cases or packages containing any such liquors or tobacco before taken an account of by the proper officers, and before deposited as aforesaid, he shall forfeit 100*l*.; and all such liquors and tobacco so removed, &c. with the casks and other packages containing the same, shall be forfeited, and may be seized by any officer: Provided, that if the duties shall not be paid within 18 months next after the said liquors and tobacco shall be so deposited, the commissioners of customs or excise may sell the same or any part thereof, for satisfying the duties and expences attending the conveying to such warehouse, and of the keeping and sale thereof, rendering the overplus, after payment, to such person as shall be by law entitled to Penalty.

52 G. 3. c. 159. the same; and if upon such tobacco, &c. being put up or offered to sale, no person shall bid for the same as much or more money than the duties, together with the warehouse rent and expences, amount to, the commissioners may permit the person entitled to the same to dispose thereof for exportation only, subject to the regulations in such cases, or if such persons refuse so to do, then to dispose of such liquors or tobacco for exportation, or to destroy the same: Provided also, that nothing hereinbefore contained shall extend to prevent any such liquors or tobacco as the said commissioners may deem necessary for that purpose being sold duty free, for the payment of the salvage expences.

Goods may be retained in custody of owner for one year, if bond enteredinto for payment of duties.

§ 3. The lord of the manor on which such liquors or tobacco shall be found, having by law just claim thereto, or where no such lord of the manor shall exist, the person or persons bringing into this kingdom, or finding any such foreign liquor or tobacco, shall be at liberty to retain the same in his possession for one year and one day from such bringing or finding thereof, on his entering into bond with two sufficient sureties, to be approved of by the proper officer of customs or excise, in treble value, for the due payment of the duties at the end and expiration of such year and day, or in default of such payment to restore such liquors and tobacco at the end or expiration of such year and day to the proper officer of the customs or excise in the same state as the same was in at the time of such bringing, &c.

Penalties sued for under customs, how levied.

§ 5. All fines, &c. imposed by this act, sued for under the order or permission of the commissioners of the customs, or by any officer of the customs, shall and may be sued for and disposed of as any fines, &c. for any offence against the laws of customs may now legally be sued for; and the officer of the customs concerned in any such seizures or prosecutions shall receive such share of the produce arising from the said seizures as they are now by law entitled to.

Penalties sued for under excise, how levied.

§ 6. All penalties and forfeitures created, and which shall be prosecuted by order of the commissioners of excise, or by any officer of excise, shall be sued for, recovered, levied, or mitigated, as any may by any law of excise, or by action of debt, &c; and one moiety shall be to H. M., and the other to him who shall inform, discover, or sue for the same.

§ IV. (21.) Vinegar, Acetous Acid, and Verjuice.

[12 C. 2. c. 24. — 7 & 8 W. 3. c. 30. — 10 & 11 W. 3. c. 21. — 12 G. 1. c. 28. — 24 G. 3. sess. 2. c. 21. — 26 G. 3. c. 73. — 43 G. 3. c. 69. — 53 G. 3. c. 103. — 58 G. 3. c. 65. — 59 G. 3. c. 52. — 1 & 2 G. 4. c. 102. — 3 G. 4. c. 27.]

Duties. See stat. 58 *G.* 3. *c.* 65.

Drawbacks. See stats. 58 *G.* 3. *c.* 65. and 1 & 2 *G.* 4. *c.* 102.

24 G. 3. sess. 2. c. 41. Vinegar maker to be licensed.

By stat. 24 *G.* 3. *sess.* 2. *c.* 41. § 1. Every maker of vinegar for sale shall take out a licence, for which he shall pay by stat. 43 *G.* 3. *c.* 69. *Sched.* (A.) 10*l.*, and by stat. 55 *G.* 3. *c.* 30. (continued by stat. 3 *G.* 4. *c.* 27. until 5th *July*, 1826,) 10*l.* in addition; and by stat. 24 *G.* 3. *sess.* 2. *c.* 41. § 7. such licence must be renewed annually, ten days at least before the end of the year; on pain of 50*l.*

§ 8. But persons in partnership need only take out one licence for one house.

By stat. 53 *G.* 3. *c.* 103. Upon the death of any person licensed, or upon the removal of any person from the house or premises in which his licence shall authorize him to make or manufacture, deal in, vend, or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorize the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted. 53 G. 3. c. 103.

By stat. 58 *G.* 3. *c.* 65. All former duties of excise on vinegar, verjuice, &c. are repealed, and other duties are imposed upon vinegar, acetous acid, and liquors prepared or preparing for vinegar or acetous acid, imported or made in *G. B.* or *Ireland;* viz. on vinegar or acetous acid, &c. made in *G. B.* or *Ireland,* 4*d.* per gallon; on vinegar, &c. imported into *G. B.* from foreign parts, 1*s.* per gallon. 58 G. 3. c. 65.

[And by stat. 59 *G.* 3. *c.* 52. A duty is imposed in lieu of all former duties of customs.] 59 G. 3. c. 52.

By stat. 10 & 11 *W. c.* 21. § 15. Thirty-four gallons shall be accounted a barrel of vinegar, according to the standard ale quart. 10 & 11 W. c. 21.

§ 14. If any vinegar maker shall, without giving notice at the next excise office, or to one of the commissioners, use any storehouse, warehouse, cellar, or other place, for making or keeping any vinegar, beer, or liquor preparing for vinegar, he shall forfeit 50*l.* Penalty on using any place without giving notice.

And by stat. 26 *G.* 3. *c.* 73. (made perpetual by stat. 35 *G.* 3. *c.* 89.) § 56. Before any person shall be entitled to carry on the trade of a vinegar-maker, he shall make an entry with the proper officer of excise, of the brewhouse, buildings, yard, or place, for the carrying on such trade; and in such entry shall specify whether he be a maker of vinegar from malt or corn, or from melasses or sugar, or from any and what other materials; and every entry not conformable thereto shall be void. 26 G. 3. c. 73.

§ 55. No vinegar-maker from melasses or sugar, or from any other materials, except malt or corn, shall carry on the trade of a distiller, or maker or rectifier of spirits, in the same premises, or within two miles thereof, and all entries made for carrying on the trade of a distiller, or maker, or rectifier of spirits, contrary hereto, shall be void. Vinegar-maker not to be a distiller or rectifier.

By stat. 58 *G.* 3. *c.* 65. § 15. No person shall make vinegar for sale from malt or other fermenting or fermentable materials, in any house or place entered for making, distilling, rectifying or purifying acetous acid called pyroligneous acid, or for making or compounding white lead, sugar of lead, verdigris, iron liquor, or acetate of lime, acetate of soda, or acetate of alumine, or within the distance of 300 feet in a direct line from any such house or place; nor shall any person make, distil, rectify, or purify pyroligneous acid, or make or compound white lead, sugar of lead, verdigris, iron liquor, or acetate of lime, acetate of soda, or acetate of alumine, in any house or place entered for making vinegar from malt, or other fermenting or fermentable materials, for sale, or within the distance of 300 feet in a direct line from any such house or place, on pain of forfeiting 500*l.* 58 G. 3. c. 65.

7 & 8 W.3. c.30. Refusing to admit the gauger.

By stat. 7&8 *W.*3. *c.*30. § 17. If any maker or retailer of vinegar shall, upon due request or demand made by the officer in the daytime, or if in the night with a constable, refuse to permit him to enter his house, storehouse, or other place belonging to or used by him, and to take account of the vinegar therein, or any liquors prepared for vinegar, he shall forfeit 15*l.*

58 G.3. c.65.

By stat. 58 *G.*3. *c.*65. § 10. Every officer of excise shall at all times upon his request, but if in the night, to be accompanied by a supervisor or surveyor, be permitted to enter into the house, warehouse, and other place belonging to or used by any vinegar-maker for sale, and to take an account, by weight, measure, or gauge, as to such officer shall seem fit, of every liquor and material, and of all sulphuric acid in the possession of such maker; and if any person shall obstruct or prevent him from so doing, he shall forfeit 200*l.*

10 & 11 W.3. c.21. At what times only to receive liquors.

By stat. 10 & 11 *W.*3. *c.*21. § 12. No vinegar-maker shall receive into his custody, stale beer, returns of beer or ale, cyder, verjuice, or other liquors for making vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from *September* 29. to *March* 25. yearly, between seven in the morning and five in the evening, and from *March* 25. to *September* 29. between five in the morning and seven in the evening; on pain of 50*l.*

To be shown to the gauger.

§ 13. On receiving such liquors into his custody, he shall shew the same to the gauger before he mixes them with any other liquors, rape, or other materials; on pain of 20*l.*

58 G.3. c.65. Vinegar-makers not to take into their custody vinegar, &c. or preparations for vinegar without giving 12 hours' notice to the officer, on penalty of 100*l.*

By stat. 58 *G.* 3. *c.*65. § 11. No vinegar-maker for sale shall have or receive into his custody any vinegar or acetous acid, or any sugar water, sugar wash, melasses water, melasses wash, alegar, stale beer, returns of beer or ale, cyder, verjuice, or other liquor prepared or preparing for vinegar, or acetous acid, or capable of being used as or applied to the purposes of vinegar or acetous acid, or any sulphuric acid, melasses, brown sugar, honey, (except for his private family,) or any pyrolignite or acetate of lime or soda, or other material (except corn or grain) fit or proper to be made into or mixed with vinegar or acetous acid, without giving 12 hours' previous notice thereof in writing to the officer of excise, under whose survey such maker shall be, specifying the day and time when the same will be received, and the quantity and description thereof, that the officer may be present to take account thereof, by weight, measure, or gauge, nor shall diminish, remove, or mix any part thereof with his stock, until the officer have taken account, nor afterwards employ any such materials uncharged with duty, without accounting for the same to the satisfaction of the officer, on pain of forfeiting for every offence 100*l.*

No wort to be sent out, nor vinegar or preparation for vinegar, unless the duty has been paid, and accompanied with a permit.

§ 12. No person shall sell or send out any fermenting or fermented wort or wash, not being fermented beer, charged with duty, to any person whatsoever; and no person not being an entered vinegar-maker shall sell or send out any vinegar or purified acetous acid, alegar, stale beer, stale ale, or stale cyder, verjuice, sugar water, or melasses water, or other liquors prepared or preparing for vinegar or acetous acid, or capable of being used as or

applied to the purposes of vinegar or acetous acid, except to an entered vinegar-maker, under notice for receiving the same as aforesaid, or without the duties hereby imposed being charged in respect of such vinegar, &c., and the same being accompanied with a permit or certificate as herein mentioned, on pain of forfeiting all such liquors, which may be seized by any officer of excise, with the cattle and carriages removing the same; and every person so offending or receiving such liquors shall forfeit 200*l.* 58 G. 3. c. 65.

By stat. 7 & 8 *W.* 3. *c.* 30. § 16. If any maker of vinegar for sale shall conceal or convey away any vinegar, or liquor preparing for vinegar, from the view of the gauger, he shall for every barrel forfeit 40*s.* Concealing.

By stat. 58 *G.* 3. *c.* 65. § 25. If any person shall remove, hide, or conceal any vinegar, or acetous acid, or liquors preparing for, or capable of being used as or applied to the purposes thereof, or any material for making, rectifying, or purifying the same, subject to the duties, with intent to defraud the king; or shall adulterate or mix with vinegar or acetous acid any other acid, (except sulphuric acid,) in the proportion not exceeding 1,000th part thereof by weight, all such vinegar or acetous acid, liquors and materials so removed, hidden, concealed, or adulterated, shall be forfeited, and may be seized by any officer of excise; and above such forfeiture, the person so offending, and every person assisting therein, shall forfeit 100*l.* 58 G. 3. c. 65. Vinegar or materials found concealed, or adulterated, shall be forfeited, and the offender shall also forfeit 100*l.*

For the provisions of this act for trying the strength of vinegar by an acetometer, see § 8, 9.; and for regulating the mode of charging the stills, see § 13, 14.

By stat. 10 & 11 *W.* 3. *c.* 21. § 11. All stale beer, returns of beer or ale, cyder, verjuice, or any other liquor proper to be made into vinegar, which shall be found in the possession of any common vinegar-maker, (except such as are to be drank in his family, and which shall be kept separate for that purpose,) shall be deemed vinegar, or liquors preparing for vinegar. What deemed vinegar, &c.

By stat. 58 *G.* 3. *c.* 65. § 6. All liquors brewed or made, by whatsoever means or manner, into vinegar or acetous acid for sale, and all liquors prepared or preparing for or capable of being used as, or applied to the purposes of vinegar or acetous acid made for sale, or found in the possession of any vinegar-maker for sale, or imported into *G. B.*, whether such liquor shall be sold, or made for sale, unmixed or mixed with any other ingredients, or shall be known and called by the name of vinegar, alegar, verjuice, radical vinegar, acetous acid, acetic acid, pyroligneous acid, or by any other name, shall be subject to and chargeable with the duties hereby imposed. 58 G. 3. c. 65. Liquors, of whatever kind, prepared for vinegar for sale, to be charged with the duty hereby imposed.

§ 24. So much of stat. 6 *G.* 3. *c.* 14. As directs that the duty on cyder or perry unfit for sale, and charged with the duties on vinegar, should be allowed, shall be repealed.

§ 6. Every person who shall make, prepare, extract, distil, rectify, purify, or sell any such liquors, not being a dealer in, retailer, or seller of vinegar, or acetous acid only, as he shall receive by permit or certificate as herein-mentioned, shall be deemed a vinegar-maker, and be subject to the licence and other duties, regulations and penalties, to which makers of vinegar are liable. Persons preparing such liquors deemed vinegar-makers.

§ 27. If any question shall arise whether vinegar or acetous acid seized be really so, the proof shall lie on the owner.

58 G.3. c.65. By stat. 58 *G.* 3. *c.* 65. Certain regulations are enacted respecting the making and rectifying pyroligneous acid, for which see § 15—20.

12 C.2. c.24. Entry and payment of the duty. By stat. 12 *C.* 2. *c.* 24. § 29, 30, 31, 32. Every such vinegar-maker shall make entry once a month at the next excise office of all liquors made within that month; and also, within a month after such entry, shall clear off the duties, on pain of double duties.

58 G.3. c.65. By stat. 58 *G.* 3. *c.* 65. § 29. All penalties and forfeitures are to be recovered, levied, and mitigated as by the excise laws. See *ante*, Sect. II.

§ 28. Powers of 12 *C.* 2. *c.* 24. and other laws of excise are extended to this act.

§ IV. (22.) Wine.

[28 H. 8. c. 14.—37 H. 8. c. 23.—12 C. 2. c. 25.—5 Ann. c. 27. —1 G. 2. st. 2. c. 17.—30 G. 2. c. 19.—30 G. 2. c. 59.—32 G. 2. c. 19.—5 G. 3. c. 46.—18 G. 3. c. 27.—23 G. 3. c. 70.—26 G. 3. c. 59.—27 G. 3. c. 13.—30 G. 3. c. 38.—32 G. 3. c. 59.—39 & 40 G. 3. c. 83.—42 G. 3. c. 44.—43 G. 3. c. 69.—c. 81.—54 G. 3. c. 77.—55 G. 3. c. 30.—57 G. 3. c. 123.—59 G. 3. c. 52.—1 & 2 G. 4. c. 84.—3 G. 4. c. 27.—c. 67.—4 G. 4. c. 69.—5 G. 4. c. 54.]

(Note, wherever *dealer* is used, *seller* must also be understood.)

59 G.3. c.52. Duty on importation. By stat. 59 *G.* 3. *c.* 52. table (A.) Various duties of customs are imposed upon wines.

And by the same act a drawback of all the duties is allowed on wine for the use of naval officers, for their consumption on board ships.

Importation of French wines. By stat. 39 & 40 *G.* 3. *c.* 83. *French* wines in bottles or flasks may be imported in *British* ships from *Guernsey*, *Jersey*, or *Alderney*, on payment of the duties.

42 G.3. c.44. By stat. 42 *G.* 3. *c.* 44. § 1. *French* wine was allowed to be imported directly from *France* on certain conditions.

§ 2. But wine so imported under either act shall be imported only in packages of six dozen at least of quart bottles, or flasks, on pain of forfeiture.

1&2 G.4. c.84. Any wine may be imported in bottles or flasks, for private use in packages containing at least six dozen quart bottles or flasks, on payment of the duties to which French wine is subject. By stat. 1 & 2 *G.* 4. *c.* 84. § 12. After reciting that whereas by the laws now in force, *French* wines are allowed to be imported into *G. B.* in bottles or flasks, provided the same are imported in packages, each of which shall contain at least six dozen reputed quart bottles or flasks, and it is expedient to permit the importation of other wines in bottles or flasks, for private use, under the like regulations; it is enacted, that after the 5th *July*, 1821, it shall be lawful for any person to import into *G. B.* for private use any wine in bottles or flasks, provided that such wine be imported in packages, each of which shall contain at least six dozen reputed quart bottles or flasks, on payment of the same duties, as well of customs as excise, as *French* wine is subject to; and under the like rules, regulations, &c. and subject to the like penalties and forfeitures, as are provided and enacted in any act with respect to *French* wine so imported into *G. B.*

59 G.3. c.52. By stat. 59 *G.* 3. *c.* 52. § 25. It shall be lawful to import into *G. B.* from the islands of *Jersey*, *Guernsey*, or *Alderney*, and also

from *Ireland*, any wine whatever in bottles or flasks, as well for sale as for private use, in packages, each of which shall contain at the least six dozen reputed quart bottles or flasks, on payment of the several and respective duties, as well of customs as excise, due and payable on the importation of such wines into *G. B.*; provided that such wines shall be imported in *British* or *Irish* built ships or vessels, owned, navigated, and registered according to law, and in such manner, and under the like regulations and restrictions, and shall be liable to the like penalties, as are in force in relation to the importation of *French* wines in bottles or flasks imported into *G. B.* 59 G.3. c.52.

By stat. 4 *G.* 4. c. 69. § 19. After the 10th of *October*, 1823, it shall be lawful to import into *G. B.* any wine whatever, as well for sale as for private use, in packages each of which shall contain at least three dozen reputed quart bottles or flasks, or six dozen reputed pint bottles or flasks, on payment of the same duties, as well of customs as excise, as *French* wine is or shall be subject to, in such manner, and under and according to such and the like rules, regulations, conditions, and restrictions, and subject to such and the like penalties and forfeitures, as are provided and enacted in any act or acts of parliament with respect to *French* wine so imported into *G. B.*, so far as the same are applicable thereto.

4 G.4. c.69. Wine may be imported in packages of three dozen quart or of six dozen pint bottles, as well for sale as private use, upon payment of duty as French wine.

§ 20. After the 10th of October, 1823, the drawbacks of the duties on customs and excise payable by any act in force immediately before the said 10th of October, 1823, upon the exportation of any wine, shall cease, and in lieu thereof shall be paid upon the exportation of any wine from *G. B.* a drawback of the full duties of customs and excise which shall have been paid upon the importation thereof into *G. B.*: Provided, that such drawback shall be allowed under the rules and restrictions, and subject to the like penalties and forfeitures, as former drawbacks upon wine, and shall only be allowed on wine which shall be exported from *G. B.* in packages each containing not less than three dozen reputed quart bottles or flasks, or six dozen reputed pint bottles or flasks.

Drawback allowed on exportation of wine in quantities of three dozen of quar or six dozen pint bottles.

By stat. 1 *G.*2. *st.*2. *c.* 17. § 7, 8. No wine (except of the growth of *Tuscany*, *Turkey*, or the *Levant*,) shall be imported in flasks, bottles, or vessels, less than 25 gallons; on pain of forfeiting the same, or the value. But see 1 & 2 *G.*4. *c.*84. § 12, &c. *ante*, p. 366, 367.

In vessels of what size to be imported.

18 G.3. c.27.

And by stat. 18 *G.* 3. *c.* 27. No wines of the growth of *Spain* or *Portugal*, and no *French* wines, shall be imported in any smaller vessel than what is commonly called an hogshead; on pain of forfeiture, half to the king and half to the officer of the customs who shall seize and prosecute; but any *French* wines may be imported in bottles, or any wines may be imported in smaller casks than an hogshead, for private use.

In estimating the additional duties on foreign wine imposed by 43 *G.* 3. *c.* 81. § 6. (made perpetual by stat. 45 *G.* 3. *c.* 45.) as being found on the first actual survey by the excise officer after the 12th of *June*, 1803, in the stock or possession of any dealer or seller of foreign wine in bottles, five reputed quart bottles shall be reckoned to the gallon, and 252 gallons to the tun.

43 G.3. c.81. Additional duties how payable.

By stat. 27 *G.* 3. *c.* 13. § 13. No wine of any sort, exceeding 10 gallons in cask, or three dozen in bottles, imported into any other port shall be removed at the same time and in the same carriage either by land or water, into the port of *London*, or

27 G.3. c.13. Removing from the outports to London.

27 G. 3. c. 13.

within 20 miles from the *Royal Exchange*, before the difference of the duties payable at the out-ports, and in the port of *London*, in addition to the duties paid on importation, shall have been paid; and without a certificate specifying such payment, and the quantity and quality of such wine; on pain of forfeiture thereof, together with the casks and vessels containing the same, which may be seized by any officer.

26 G. 3. c. 59.
License for selling by wholesale.

By stat. 26 *G.* 3. *c.* 59. § 8, 9. Every person who shall deal in or sell foreign wine by wholesale, shall *first take out a licence* from the officers of excise, which they are required to grant without fee; and shall renew the same annually ten days at least before the end of the year, on pain of forfeiting 100*l.*

First take out a licence.] In the case of *R.* v. *The Commissioners of Excise*, 2 *T. R.* 381. it was determined that a person who intends to become a wholesale dealer in foreign wine must take out a licence, and enter his warehouse as directed by 26 *G.* 3. *c.* 59. *before he lays in his stock;* and that such dealer is not entitled to a permit to remove wine sold, which wine was laid in *before* he took out his licence.

Partners.

By stat. 26 *G.* 3. *c.* 59. § 9. Persons in partnership need not take out more than one licence for one house. But such licence shall not extend to any other house or place than such as has been entered.

30 G. 2. c. 19.
Retailing wine unlicensed.

By stat. 30 *G.* 2. *c.* 19. § 2. No person, unless authorised and enabled as hereinafter prescribed, shall sell or utter by retail, that is, by the pint, quart, pottle, or gallon, or by any other greater or less retail measure, or in bottles, in any less quantity than shall be equal to the measure of the cask or vessel in which the same shall have been or may lawfully be imported, any kind of wine or liquor called or reputed wine; on pain of 100*l.*, half to the king and half to the informer, to be recovered as the penalties for offences

32 G. 2. c. 19.

against the stamp acts. (Provided that the said penalties may be mitigated by the commissioners as they shall think fit; the costs and charges of the officers and informers being always allowed over and above the mitigation.)

5 G. 4. c. 54.
Licence for retailing foreign wine.

By stat. 5 *G.* 4. *c.* 54. § 1. All duties on excise licences taken out by retailers of foreign wine in *G. B.* who shall have taken out a licence for retailing beer, but shall not have an excise licence for retailing spirits, and by retailers of foreign wine in *G. B.*, who shall have an excise licence for retailing spirits, are repealed.

43 G. 3. c. 69.

By stat. 43 *G.* 3. *c.* 69. Every retailer of foreign wine in *G. B.* shall take out a licence from the officers of excise, for which he shall pay

		£.	s.	d.
	If he have neither a spirit nor beer licence, - -	5	4	0
55 G. 3. c. 30.	And by stat. 55 *G.* 3. *c.* 30. (continued by 3 *G.* 4. *c.* 27. till 5th *July*, 1826,) additional, - - - -	5	4	0
43 G. 3. c. 69.	If he have both a beer and spirit licence, - -	2	4	0
55 G. 3. c. 30.	And by stat. 55 *G.* 3. *c.* 30., additional, - -	2	4	0

5 G. 4. c. 54.

By stat. 5 *G.* 4. *c.* 54. § 2. Every retailer of foreign wine in *G. B.* shall, from 10th *October*, 1824, annually take out an excise licence, for which he shall pay

	£.	s.	d.
If he has a beer licence, but not a spirit licence, -	4	4	0
If he has a spirit (a) licence, - - -	2	4	0

(a) Which will not be granted to any person who has not an ale licence. See 29 G. 2. c. 12. § 22. *R.* v. *Downes*, 3 T. R. 566, 567.

which licence by 5 *G*.4. *c*.54. § 13. shall expire on the 10th *October* in each year. 5 G.4. c.54.

§ 14. After reciting that licences to keep common inns, &c. are in some parts of *G. B.* granted by the magistrates at other parts of the year than in *September* in each year, and excise licences to retail foreign wine in such common inns, &c. have been granted and are now in force; Enacts, that nothing in this act shall affect any licence now in force to retail wine in any inn, &c. before the expiration of the current year for which each such licence has been granted: but that all such licences to retail wine in any such inn, &c. shall on their previous expiration be renewed for such part only of the current year for which such inn, &c. shall be so authorized to be kept, and that the commissioners of excise and other persons authorized by them, and the several collectors of excise may receive from the several persons liable to pay the same a proportionate part of the duties payable on every such licence, and grant the same for such fractional part of the year between the time when any such licence shall expire, and the remainder of the year for which such inn, &c. shall be so duly authorized to be kept: and in every future year every excise licence to sell beer, spirits, or wine in any inn, &c., duly authorized to be kept, shall be granted for the year ending on the next succeeding excise quarter-day after the expiration of the year for which such inn, &c. shall be authorized to be kept, and shall then respectively expire and be renewed under this act to the day of renewal.

When common inns, &c. are licensed at other times than September, the spirit licence shall expire on the succeeding excise quarter day.

By stat. 30 *G*.3. *c*.38. § 9. Every person who shall retail any foreign wine, without such licence, shall forfeit 50*l*. 30 G.3. c.38. Penalty.

§ 9. And the same shall be renewed annually ten days at least before the expiration of the former licence, on the like penalty of 50*l*. To be renewed annually.

By stat. 5 *G*. 4. *c*.54. § 12. All the powers, regulations, restrictions, &c. of former acts, relating to the retail of foreign wine, shall continue in full force and be put in execution throughout *G. B.* as to the several duties by this act imposed. 5 G.4. c.54. Saving for powers, &c. of former acts.

By § 4. The duties hereby granted are placed under the management of the commissioners of excise for the time being, and levied as former licence duties of excise, except where altered by this act. § 5. Duties to be carried to the consolidated fund. Duties how managed and applied.

By stat. 32 *G*.3. *c*.59. § 9. No person by virtue of any licence from the commissioners of excise for the sale of foreign wines shall sell the same by retail to be drank in his house, or place thereto adjoining or belonging; except a licence shall have been granted to him by the justices or other officers to sell ale and beer in the same house. And the justices and other officers shall have the same jurisdiction, power, and authority over such retailers of foreign wine, as they now have over alehouse keepers. 32 G.3. c.59. Selling wine by retail without beer licence.

§ 9. If any person shall sell by retail to be drank as aforesaid any such foreign wine, without having such ale licence as aforesaid, he shall forfeit the like penalties as persons selling ale without licence are subject to by stat. 5 *G*. 3. *c*. 46. The same to be recovered and applied as by that or any other act relating thereto is directed.

By stat. 30 *G*.3. *c*.38. § 10. And on the death or removal of any such licensed person, the commissioners and the collectors and surveyors of excise, may authorize the executors or administrators, wife or child of such deceased person, or the assignee or 30 G.3. c.38. Licensed person dying or removing.

30 G. 3. c. 38. assignees of such person so removing, to carry on such trade, during the residue of the term for which such licence was granted. [See also 53 *G.* 3. *c.* 103. *post*, p. 376.]

Persons in partnership. § 10. Persons in partnership need not take out more than one licence for one house or place. But such licence shall not extend to any other house or place than such as shall be entered.

House or place to be entered. § 10. But no licence shall authorize any person to sell wine in any other than such house, shop, or place, in which he shall retail the same at the time of granting such licence, and an entry thereof in writing shall be made at the excise office in the name of such person at the time of granting such licence.

Who shall be deemed wholesale, and who retail dealers. § 15. And every person, who shall sell or expose to sale any foreign wine in a less quantity than shall be equal to the quantity in which the same may be lawfully imported by way of merchandize, shall be deemed a retailer within the meaning of this act.

26 G. 3. c. 59. By stat. 26 *G.* 3. *c.* 59. § 11. Every person who shall have taken out a licence for retailing foreign wine, and who shall not take out a licence for retailing spirits or ale, shall be deemed a dealer by *wholesale;* but if he is licensed for retailing either spirits or ale, he shall be deemed a *retailer.*

Certain words to be put up. § 14. And every *wholesale* dealer shall cause to be painted or written in large legible characters over the outer door, or in the front or on some conspicuous part of each house, &c. and other place by him used for the keeping of foreign wine for sale, the words *dealer in foreign wine;* on the penalty of 50*l.*, for each such house, &c.

§ 15. If he shall put up those words on any unentered place, he shall forfeit 100*l.* and be subject to the penalties for selling foreign wine without entry.

32 G. 2. c. 19. By stat. 32 *G.* 2. *c.* 19. § 3. Every *retailer* shall cause the word *wine* to be expressed either on a sign hung out, or in some visible place, or near the door in the front of his house, or other place made use of for the retailing of wine, to denote that such retailer is a dealer in wine, and liable to take out a licence for the retailing thereof: And if any person shall sell wine by retail without fixing or hanging out such token, he shall forfeit 10*l.*

26 G. 3. c. 59. **Warehouses, &c. to be entered.** By stat. 26 *G.* 3. *c.* 59. § 12. Every dealer in foreign wine shall make entry in writing at the next excise office of all warehouses, vaults, or other places by him made use of for keeping foreign wine for sale; on pain of forfeiture of the wine therein, and of the casks, bottles, and packages containing the same; and also of 100*l.* for every such place. But this shall not extend to wine sold whilst lying openly on the quay where first landed.

§ 13. When entry shall have been made by any dealer, no other dealer (not being in partnership with the dealer who made such first entry) shall on any pretence whatsoever make entry of the same, or of any other warehouse or place within the same house or tenement in which such first entry shall then be existing; but every person making such further entry shall be deemed a dealer in foreign wine without entry, and shall be subject to the like penalties as dealers in foreign wine without entry.

Officers may enter warehouses, &c. and take samples. § 17, 18. Any officer of excise may enter, upon his request, by day or night, (but if in the night in the presence of a constable or other peace officer) any place made use of for keeping wine by any dealer, either by wholesale or by retail, and by tasting, gaug-

26 G. 3. c. 59.

ing, or otherwise (except wine in bottles) to take an account of all the wine in any vessels, except bottles, and also to take account of the wine in bottles in any other manner than by tasting the same, or by uncorking or opening the bottles, and also may take samples of the wine, whether in casks or bottles, paying for the same; and any person obstructing the officer shall forfeit 100*l.*

Casks, &c. to be marked by the dealer with the quantity they will contain.

§ 19. Every dealer shall mark upon every cask or vessel containing more than *three* gallons of foreign wine the quantity such vessel is capable of containing, and also the sort of wine kept therein, whether it be French red or white, or foreign red or white; on pain of forfeiture thereof, and the casks or vessels containing the same, which may be seized by any officer.

54 G. 3. c. 77. Wine of the produce of the Cape of Good Hope to be kept separate from other foreign wine, as directed by 26 G. 3. c. 59.

By stat. 54 *G.* 3. *c.* 77. § 5. Every dealer in foreign wine shall distinguish all wine in his possession, the produce of the *Cape of Good Hope*, in like manner as he is by stat. 26 *G.* 3. *c.* 59. directed to distinguish foreign wine other than *French* wine from *French* wine, and shall in like manner distinguish all red wine of the said settlement from all white wine in his possession the produce thereof, in like manner as he is by the said act directed to distinguish *French* white wine from *French* red wine; under the rules and forfeitures of the said act.

26 G. 3. c. 59. Places for keeping wine to be shewn to the officer, and the casks to be marked by him.

By stat. 26 *G.* 3. *c.* 59. § 20, 21. Every dealer shall shew to the officer under whose survey he is, every cask or vessel above three gallons' capacity, and every bin or place in which he shall keep any foreign wine, on pain of forfeiture thereof, and also of such vessels: And the officer shall mark such casks and bins so shewn to him; and if any person shall rub out or deface such mark; or if any dealer shall without notice given at the excise office set up any vessel or utensil for keeping or containing of wine, or alter or enlarge any vessel, utensil, or bin already set up capable of holding three gallons, or shall have the same in any concealed or unentered place; he shall forfeit for every such bin, vessel, or utensil so set up and altered, 50*l.*

Notice to be given when wine is intended to be drawn off.

§ 22. Every wholesale dealer shall, before he begins to draw off or bottle any foreign wine, give six hours' notice in writing if within the bills, elsewhere 12 hours', to the officer of excise, of his intention to draw off or bottle any such wine, and the particular warehouse or place and the quantity, and into how many casks or bottles the same is intended to be drawn, and what sort of wine, and from what particular cask or vessel; and such officer may attend if he think fit; and the same shall be packed or piled in the presence of such officer, if he attend, or an account thereof given to him upon his next survey. And no wine shall be removed from the place in which it shall have been so deposited without giving like notice on the penalty of 50*l.* But not to extend to a small number of bottles drawn off more or less than is contained in such notice.

§ 22. Provided, that if the dealer shall not begin and proceed to draw off or bottle such wine within one hour after the time mentioned in the notice, the same shall be void, and he shall give a fresh notice. [See also stat. 42 *G.* 3. *c.* 93. § 5.]

Exception.

§ 22. But nothing herein contained shall extend to make it unlawful for any wholesale dealer to draw off or bottle any wine at his will and pleasure for the purpose of immediately sending out the same, without giving notice.

Wine of different sorts to be kept separate.

§ 23. All foreign wine of different sorts shall be kept separate, on the penalty of 50*l.*

54 G. 3. c. 77. Red and white *Cape* wine to be kept separate by dealers.

By stat. 54 *G.* 3. *c.* 77. § 4. Every dealer in foreign wine shall keep all red wine, the produce of the *Cape of Good Hope*, separate, and in separate bins, casks, bottles and divisions; and in like manner keep all white wine of the said settlement separate, and in separate bins, casks, bottles, and divisions; on pain of forfeiting 50*l.*

Penalty for mixing *Cape* with other wine.

§ 8. If any dealer in foreign wine shall mix red wine or white wine in his possession, of the produce of the *Cape of Good Hope*, with any other wine, he shall forfeit 300*l.* and the wine so mixed.

26 G. 3. c. 59. Cyder and spirits to be kept separate from wine.

By stat. 26 *G.* 3. *c.* 59. § 24. All *retail* dealers who shall have in their custody any cyder, spirituous or other liquors, shall keep the same separate and apart from foreign wine; on pain of forfeiting 10*s.* for every gallon of cyder or spirits which shall not be so kept separate, together with such wine, cyder, and spirits, and the cask, bottles, and packages containing the same; which may be seized by any officer of excise.

Cyder, &c. found amongst wine.

§ 29. All cyder, sweets, *British*-made wine, mead, spirits, and other liquors whatsoever, found in any entered place for the keeping or selling of foreign wine by any wholesale dealer, shall be deemed and taken to be foreign wine within the meaning of this act of the same sort as the wine with which it shall be kept; or if kept separate from any wine, then the same shall be deemed and taken as *French* red wine.

No dealer in foreign wine to have sweets in his possession.

§ 25. But no dealer in or seller of foreign wine shall have in his possession any *British*-made *wine*, or *sweets*; on pain of forfeiting the same, and also 10*s.* a gallon.

57 G. 3. c. 123. No dealer in foreign wine, not being an entered dealer in spirits, shall have more than two gallons of spirits of wine at a time, or any other British spirits of greater strength than 20 per cent. under hydrometer proof. Penalty 100*l.*

By stat. 57 *G.* 3. *c.* 123. § 14. No dealer in foreign wine, not being an entered dealer in or retailer of spirits in *England*, shall have or receive into his custody any spirits of wine, exceeding two gallons at one time, or any *British* spirits, except spirits of wine, of a greater strength than twenty per centum under hydrometer proof; on pain of forfeiting such spirits, which may be seized by any officer of excise; and the person offending shall forfeit 100*l.*

26 G. 3. c. 59. An account to be kept of wine daily sold.

By stat. 26 *G.* 3. *c.* 59. § 26. For the better ascertaining the quantity of wine sold by dealers, every person who shall sell any foreign wine shall keep an account of the quantity sold, sent out, or consumed in each day under three gallons, expressing the number of gallons or bottles; and shall every day enter into a book to be kept for that purpose an account of the gross quantities sold, sent out, &c. the preceding day; and also in another book shall enter each parcel of three gallons or more which shall be sold or sent out in each day, expressing the number of gallons or bottles; which books are to be prepared by the commissioners, and delivered unto the dealer upon demand; but no dealer shall have above one book of each sort in his custody at one time; and when filled up, it shall be returned to the officer from whom it was received, and the truth of the entries shall be verified on oath by such dealer or his servant who kept the same and made the entries therein to the best of his knowledge and belief to be administered by the officer; and a new book shall be thereupon delivered to the dealer, and so *toties quoties* as often as such book shall be filled up; and such book shall lie open to be perused by the officer; and the

dealer shall, at the request of the officer, fill up such books respectively, with the quantity by him sold in each day. And every dealer or seller offending in any of the matters aforesaid, or making any false entry in any such books, shall forfeit 20*l.* 26 G.3. c.59.

§ 27, 28. If any officer shall find that the quantity of foreign wine in the stock of any wholesale dealer, added to the quantity for which permits have been granted, and also to the quantity sold, sent out, or consumed in small quantities, under three gallons, since the last account was taken, exceeds the stock left in hand, on taking the account, after adding the quantity since received by permit (if any) such quantity so found in excess shall be deemed to be made by foreign wine for which no duty has been paid and privately brought in without permit, and shall be forfeited, and may be seized by the officer; and the person in whose stock the same is found, shall also forfeit double the value thereof. — But not to extend to an excess of stock occasioned by lawfully receiving wine from any lawful quay, and in the original casks in which the same was imported, and no part drawn thereout. Excess in stock to be forfeited.

§ 34. No foreign wine exceeding three gallons shall be removed without a permit as directed by this act, on pain of forfeiture thereof, and the same shall be seized by any officer of excise. Not to be removed without permit.

§ 31. 35, 36. If any wine shall not be delivered within the time limited in the permit (except in case of some unavoidable accident) the same shall be deemed and taken as wine removed without permit. Provided always, that the same shall be restored without delay, if the person who hath the charge thereof at the time of the seizure, enter into recognizance with one surety before a neighbouring justice, in double the value of such seizure, to prove within one month next ensuing to the satisfaction of the commissioners of excise, that such wine through unavoidable accident could not be so delivered and received; and the justice shall certify upon the back of the permit that such recognizance hath been entered into, and also allow such further time for the wine to be delivered, as to him shall seem meet; which indorsement shall have the same force as a permit granted according to this act; and the justice shall forthwith transmit every such recognizance to the king's remembrancer in the court of exchequer. If not delivered within the time limited.

By stat. 54 *G.* 3. *c.* 77. § 6. Every permit granted for the removal of wine, the produce of the *Cape of Good Hope*, shall distinguish such wine from all other wine according to the denomination in the request note, according to the directions of 26 *G.* 3. *c.* 59. Permits for removal to distinguish *Cape* from other wine.

By stat. 5 *Ann. c.* 27. § 17. 231 cubical inches shall be a wine gallon, 63 gallons a hogshead, 126 gallons a butt or pipe, and 252 gallons a tun. Wine measure

By stat. 26 *G.* 3. *c.* 59. § 32. No wine shall be brought into any place made use of by any dealer in foreign wine without an authentic permit granted and given according to the directions of this act, which shall be produced to and left with the officer under whose survey such dealer shall then be, on pain of forfeiture thereof, together with the casks, bottles, and packages containing the same, and the said wine, &c. may be seized by any officer of excise. Wine brought into warehouses without permit

§ 33. Every private person (not being a dealer either by wholesale or retail) who shall have occasion to remove any foreign wine from one place to another shall have a permit from the officers Private persons removing wine to have a permit.

26 G.3. c.59. of excise, on proof of payment of duties, and on a request note, specifying the quantity and kind and number and contents of the vessels, and whether by land or water, and by what mode of conveyance; on pain of forfeiture thereof, with the casks, bottles, and package containing the same, and also the horses, cattle, carriages, or boats used in the removal thereof; and the same may be seized.

But if not removed, such permit to be returned.

§ 37, 38. Where any permit shall have been granted to any dealer in wine, or private person as aforesaid, and he shall not actually and really send away the wine by such permit authorized, nor return the permit to the officer who granted the same, before the expiration of the time limited therein, he shall for every gallon of wine mentioned in such permit forfeit treble the value thereof, to be estimated according to the highest price of such sort of wine of the best quality in *London*. [See also stat. 42 *G*. 3. *c*. 93. § 6.]

Where the decrease in stock is not proportionate to the permit.

§ 37. Where such permit shall not be by the dealer returned as aforesaid, and upon taking an account of the stock remaining in his hands there shall not appear a decrease to answer the wine mentioned in the permit, then and in such case such dealer shall forfeit the like quantity of wine so permitted and not removed, to be seized by the officer, out of any wine in his custody of the denomination given in the permit; but if he shall not then have such quantity of the same denomination in his custody, he shall forfeit 100*l*.

Using false permits, or forging recognizances, &c.

§ 39, 40. If any person shall counterfeit or forge or cause to be so done, any such permit, or any certificate or indorsement of the recognizance required (by § 36.), or fraudulently alter or erase any permit, or certificate, &c., or knowingly or willingly give or receive any false or untrue permit, &c., or publish or make use of the same, or receive the same with any wine, he shall forfeit 500*l*.

Hiding or concealing foreign wine.

§ 42. In case any foreign wine shall be fraudulently deposited, hid, or concealed with intent to defraud H. M. of the duties, the same shall be forfeited, together with the casks, bottles, and packages containing the same. And the better to enable the officers to make discovery thereof, if any officer shall have cause to suspect that any wine is so fraudulently deposited, hid, or concealed, if within *London* or *Westminster*, or the limits of the chief office of excise, upon oath made by such officer before two commissioners of excise, elsewhere before a justice, setting forth the grounds of his suspicion; such commissioners or justice respectively, before whom such oath shall be made, may by warrant empower such officer by day or night, (but if in the night in the presence of a constable or other peace officer) to enter such suspected place, and to seize and carry away such wine which shall be found so concealed as forfeited, together with the casks and packages.

Obstructing or attempting to corrupt officers.

§ 44, 45. If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this act; or shall rescue any foreign wine after seizure, or stave, break, destroy, or damage any cask, vessel, bottle, or other package, whilst any officer is attempting to seize the same; or shall offer to bribe or corrupt any officer to do contrary to his duty, whether such offer be accepted or not; he shall forfeit 100*l*. for every offence.

Opening wine sealed for exportation.

§ 47. If any person (except the proper officer) shall open any package of foreign wine sealed for exportation, or shall wilfully destroy or deface the seal or mark, he shall forfeit 50*l*.

§ 48. Provided, that if any wine so shipped for exportation shall be unloaded, or laid on land (shipwreck, &c. excepted), the same, or the value thereof, shall be forfeited, above the penalty in any bond which may have been given. 26 G. 3. c. 59. Landing wine which has been shipped.

§ 50. But no officer of the customs shall be entitled to any reward for any seizure, unless he give notice thereof within 12 hours at the next excise office, or to the supervisor of excise. Officers not entitled to rewards unless notice of seizure is given in 12 hours.

§ 51. No person being a dealer in or seller of foreign wine, or any way interested or concerned therein, shall during such time act as a justice in the execution of this act; and all acts done by any such person shall be utterly void. No dealer in wine to act as a justice.

Finally, by stats. 26 *G.* 3. *c.* 59. § 55. — 30 *G.* 3. *c.* 38. § 16. — 54 *G.* 3. *c.* 77. § 9. All fines, penalties, and forfeitures by this act imposed may be sued for, recovered, levied, or mitigated as by the laws of excise [*ante*, § II.] or in the courts at *Westminster*, and distributed half to the king, and half to him that shall sue. Penalties how to be recovered.

And by stat. 30 *G.* 3. *c.* 38. § 19. All powers in former acts relating to the retailing of wine shall extend to this act, unless repugnant to or altered thereby.

N. B. Respecting the indemnity for officers seizing under stat. 26 *G.* 3. *c.* 59. see § 57. and 23 *G.* 3. *c.* 70.

30 *G.* 2. *c.* 19. § 9. — 26 *G.* 3. *c.* 59. § 11. — 30 *G.* 3. *c.* 38. § 11. Provided that nothing herein shall be prejudicial to the privileges of the two universities. Not to extend to the two universities.

Nor to the company of vinters in *London*, or to any other city or town corporate; but they may enjoy such privileges as they have heretofore lawfully enjoyed. Provided, that no person, who shall be admitted to the freedom of the said company of vintners by redemption only, shall be exempted from taking such licence; but only the freemen of the said company who have been already admitted to their freedom, or who shall after the said 5th day of *July* 1757 be admitted to their freedom in right of patrimony or apprenticeship, shall be entitled to such exemption. 30 *G.* 2. *c.* 19. § 11. — 26 *G.* 3. *c.* 59. § 11. — 30 *G.* 3. *c.* 38. § 12. Nor to the vintners' company.

Nor to extend to the mayor and burgesses of *St. Alban's* for appointing and licensing by virtue of their charter three wine taverns, for and towards the maintenance of the free school there. 30 *G.* 2. *c.* 19. § 12. — 26 *G.* 3. *c.* 59. § 11. — 30 *G.* 3. *c.* 38. § 13. Nor to the mayor, &c. of St. Alban's.

By stats. 28 *H.* 8. *c.* 14. § 2, 3. — 37 *H.* 8. *c.* 23. § 2. — 12 *C.* 2. *c.* 25. § 13. The lord chancellor, lord treasurer, lord president, lord privy seal, and two chief justices, or any three of them, shall yearly, between *Nov.* 20 and *Dec.* 31., set the prices of foreign wine sold in gross; so that proclamation be made thereof in term time in the court of chancery, or in the town where they shall be sold; and if any person shall offend against the said assessment, he shall forfeit for every vessel 40*s.*, half to the king, and half to the mayor, if in a town corporate; and if not to him that shall sue. Setting the price of wines.

And by stat. 28 *H.* 8. *c.* 14. § 14. The justices of the peace, and mayors may hear and determine the faults of such offenders, and punish them by imprisonment or otherwise, by their discretions. 28 H. 8. c. 14.

By stat. 37 *H.* 8. *c.* 23. § 3. If any person shall refuse to sell at the prices limited, the mayor and recorder, and two ancient aldermen in *London*, being no vintners, and the mayor, aldermen, and other head officers elsewhere, or any two of them, whereof the 37 H. 8. c. 23.

mayor or chief aldermen to be one, may enter and sell the same to the owner's use.

12 C. 2. c. 25. Adulterating wines.

By stat. 12 *C.* 2. *c.* 25. § 11. No person selling wine shall mix wines together nor with any other thing; on pain that the seller in gross shall forfeit 100*l.* and the retailer 50*l.*, half to the king, and half to him that shall sue in any court of record.

IV. (23.) Wire.

[10 Ann. c. 26.—12 G. 1. c. 28.—15 G. 2. c. 20. —22 G. 2. c. 36. — 24 G. 2. c. 40. — 10 G. 3. c. 44. — 24 G. 3. sess. 2. c. 41. — 26 G. 3. c. 77. —28 G. 3. c. 7. — 43 G. 3. c. 69. — 45 G. 3. c. 30. — 49 G. 3. c. 98. — 53 G. 3. c. 103. — 3 G. 4. c. 27.]

Duties.

By stat. 43 *G.* 3. *c.* 69. *Sched.* (A.) duties are laid upon wire made in *G. B.*; and by 45 *G.* 3. *c.* 30. additional duties are imposed. *

Licence.

By stat. 43 *G. c.* 69. Every *wire drawer* or other person who shall draw any gilt or silver wire, commonly called *big wire*, shall take out a licence for which he shall pay 2*l.*; and by 55 *G.* 3. *c.* 30. (continued by 3 *G.* 4. *c.* 27. until 5th *July* 1826,) 2*l.* additional; and by 24 *G.* 3. *sess.* 2. *c.* 41. § 7., such licence must be renewed annually ten days at least before the end of the year, on pain of 20*l.*

§ 8. But persons in partnership need only take out one licence for one house.

53 G. 3. c. 103. Transfer of licences.

By stat. 53 *G.* 3. *c.* 103. Upon the death of any person licensed, or upon the removal of any person from the house or premises in which his licence shall authorize him to make or manufacture, deal in, vend, or sell, any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorize the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted.

10 Ann. c. 26. Places of making to be entered.

By stat. 10 *Ann. c.* 26. § 49. Every person who shall draw any gold or silver into *big wire*, shall first give notice in writing at the next office for the duties on wire, of his name and place of abode, and where he intends to work, on pain of 20*l.*; and no refiner, wire-drawer, or other person, shall draw any gold or silver into big wire, at any place other than some common bar-house to be approved by the commissioners, on pain of 20*l.*

§ 59. All gilt and silver wire, and bars for making it, which shall be found in any private work-house, and all private utensils for barring or drawing it, of which notice hath not been given, shall be forfeited and seized, or the value thereof recovered by any officer of the duties on wire.

Officers to enter and survey.

§ 52. The officer shall at all times by day or night, (if at night in presence of a constable,) be permitted on his request to enter the bar-house, work-house, or other place used for making of such wire, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall appoint, leaving a copy thereof, if demanded, with the maker; and if he

* By stat. 59 G. 3. *c.* 52. several duties of customs are imposed on *wire* imported, as particularly set forth in tables annexed to the act.

shall refuse to leave such copy (after demand in writing, 12 G. 1. c. 28. § 30.) he shall forfeit 40*s*. 10 Ann. c. 26.

§ 55. If any such maker shall obstruct the officer in the execution of his office, he shall forfeit 20*l*. 26 G. 3. c. 77. Obstructing the officer.

By stat. 26 *G.* 3. *c.* 77. § 8. If he shall in weighing hinder the officer from taking a just account, or by any contrivance hinder or impede him, he shall forfeit 100*l*.

By stat. 10 *Ann.* *c.* 26. § 54. The maker shall keep just weights and scales at the place of making the wire, and permit and assist the officer to weigh; on pain of 10*l*. 10 Ann. c. 26. Scales and weights.

By stat. 10 *G.* 3. *c.* 44. § 1. If he shall use false or insufficient scales or weights, he shall forfeit 100*l.*; but not to be prosecuted both on this and the former act. And by stat. 28 *G.* 3. *c.* 37. § 15. the same shall be forfeited, and may be seized by any officer. 10 G. 3. c. 44.

By stat. 15 *G.* 2. *c.* 20. § 8, 9. Every ingot or bar of silver, designed for gilt wire, shall be weighed in the presence of the excise officer, who attends the forge where they are made, before they be covered with gold; and shall be weighed in presence of and marked by the said officer, after the gold is laid on; and on refusal to admit the officer, the refiner or maker shall forfeit 20*l*., half to the king, and half to him that shall sue. 15 G. 2. c. 20. Ingots to be weighed.

By stat. 10 *Ann.* *c.* 26. § 53. If the officer's charge be made, by taking the weight of the gold and silver in big wire at the bar-house, an allowance of one-fifth part shall be made, in consideration of the waste, in reducing the same to small wire. Allowance for waste.

§ 56. No wire-drawer shall (on pain of 40*l*.) remove any gilt or silver wire, of which no account hath been taken, from the bar-house or place of making, without giving to the officer 24 hours' notice. Removing before surveyed and charged.

§ 57. Wire not surveyed shall be kept separate from that which hath been taken account of for 24 hours after making, unless it shall be sooner taken account of, on pain of 10*l*. Wire unsurveyed to be kept separate.

§ 58. If the maker, or he for whom it is made shall conceal any wire, or bars of silver prepared for making it; he shall forfeit 20*l*. Concealing.

§ 50. Every maker shall once in every month make entry in writing at the next office of all the wire by him made, setting forth the weight and kinds, and how much was made in each week; on pain of 100*l*. Which entry shall be made on the oath of the maker, or his chief workman, to the best of his knowledge and belief, to be administered by the officer. Entry of wire made.

§ 51. And the duty shall be paid off in six weeks after entry, on pain of double duty. Payment of the duty.

By stat. 10 *Ann.* *c.* 26. § 64. — 24 *G.* 2. *c.* 40. § 29. — 24 *G.* 3. *sess.* 2. *c.* 41. — 43 *G.* 3. *c.* 69. § 4. All the powers of the excise laws shall be in force for managing these duties; and the penalties and forfeitures (not herein otherwise directed) shall be sued for, levied, and mitigated, as by the laws of excise, [*ante*, § III.], or in the courts at *Westminster*; and be employed, half to the use of the king, and half to him that shall inform or sue. 10 Ann. c. 26. &c. Power of the justices.

By stat. 10 *Ann.* *c.* 26. § 60. — 28 *G.* 3. *c.* 37. § 21. All such wire, materials, and utensils, in custody of any maker, or other to his use, shall be liable to the duties and penalties; and such proceedings may be had thereupon as if such debtor or offender were the lawful owner. Utensils liable

For regulations concerning the true making of gilt and silver wire, see the act of 15 *G.* 2. *c.* 20. and 28 *G.* 3. *c.* 7.

And for prohibiting the selling or working up of foreign gold or silver lace or thread, see the 22 *G.* 2. *c.* 36.

By stat. 10 *A. c.* 26. § 55. Any person obstructing an officer of excise in execution of this act shall forfeit 20*l.*

§ 64. All penalties recoverable as by the laws of excise (see *ante*, Sect. II.), and § 76. Persons sued for things done in pursuance of this act may plead the general issue, and shall have treble costs on nonsuit or verdict for defendant.

A. A. Information before one justice upon 9 *G.* 2. *c.* 35. § 21., *ante*, p. 33. for carrying run or prohibited goods, liable to the duties of customs or excise.

County of ——— *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *at* ——— *in the said county;* A. I. *of* ——— *in the said county,* ———, *who prosecutes as well for the poor of the said parish of* ——— *in the said county, as for himself in this behalf, in his proper person cometh before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county; and as well for the poor of the said parish of* ——— *in the said county as for himself, giveth me the said justice to understand and be informed, that after the 24th day of* June 1736, *to wit, on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *at the parish of* ———, *in the said county, one* O. X. *being one of his majesty's officers of the customs* [or *excise*], *did find and seize upon and in the custody of one* A. O. *late of* ——— *in the said county, divers, to wit* [here set forth the goods found and the value thereof], *being goods, wares, and merchandize liable to the payment of the duties of customs* [or *excise*] *to and for the use of his majesty, which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit to the parish of* ——— *aforesaid, without payment of the said duties for the same; and that the said* A. O. *was at the time of such finding and seizing of the said goods, wares, and merchandize, at the parish aforesaid, employed in carrying the same, he the said* A. O. *then and there well knowing the said goods, wares, and merchandize, to have been clandestinely run and imported as aforesaid without payment of the said duties of customs,* [or *excise*] *contrary to the form of the statute in such case made and provided; whereby and by force of the said statute the said* A. O. *hath forfeited the sum of* ——— *pounds, being treble the value of the said goods, wares, and merchandize so found and seized as aforesaid; one moiety thereof to the said* A. I. *the said informer, and the other moiety thereof to the poor of the parish of* ———, *being the parish where the said offence was committed; and the said* A. I. *who prosecutes as aforesaid, prays that the said* A. O. *may be convicted of the said offence; and that one moiety of the said forfeiture may be adjudged to the said* A. I., *and the other moiety thereof to the poor of the said parish of* ———, *according to the form of the statute in such case made and provided; and*

that the said A. O. *may be summoned to answer the said complaint and information, and to make defence thereto.*

Before me, J. P. A. I.

B. Summons before one justice upon stat. 9 *G.* 2. *c.* 35. § 21., *ante*, p. 33., for carrying run or prohibited goods. B.

County of ——— { To A. O. of ——— in the said county, ———.

WHEREAS an information hath this day been made by A. I. *of* ———, *in the said county* ———, *who prosecutes as well for the poor of the said parish of* ——— *as for himself in this behalf, before me* J. P. *esquire, one of his majesty's justices of the peace in, and for the said county, setting forth that after the* 24*th day of* June 1736, *to wit, on the* ——— *day of* ——— *in the year of our Lord* ———, *at the parish of* ——— *in the said county, one* O. X. *being one of his majesty's officers of the customs* [or *excise*] *did find and seize upon and in the custody of you,* A. O. *late of* ——— *in the said county* [here set forth the goods found and the value thereof], *being goods, wares, and merchandize liable to the payment of the duties of customs* [or *excise*] *to and for the use of his majesty, which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of* ——— *aforesaid; and that you the said* A. O. *was at the time of such finding and seizing of the said goods, wares, and merchandize at the parish aforesaid, employed in carrying the same, you the said* A. O. *then and there well knowing the same goods, wares, and merchandize to have been clandestinely run and imported as aforesaid, without payment of the said duties of customs,* [or *excise*] *contrary to the form of the statute in such case made and provided; whereby and by force of the said statute you the said* A. O. *have forfeited the sum of* ——— *pounds, being treble the value of the said goods, wares, and merchandize so found and seized as aforesaid; one moiety thereof to the said* A. I. *the said informer, and the other moiety thereof to the poor of the said parish of* ——— [or as the case may be], *and praying that you the said* A. O. *may be convicted of the said offence, and that one moiety of the said forfeiture may be adjudged to the said* A. I. *and the other moiety thereof to the poor of the said parish of* ——— [or as the case may be], *according to the form of the statute in that case made and provided. These are therefore to require you the said* A. O. *to appear before me at the house of* ——— *in* ——— *in the said county, on* ——— *the* ——— *day of* ——— *next ensuing, at the hour of* ——— *in the* ——— *noon of the same day, to answer the matter of complaint contained in the said information, and to shew cause (if any you have) why you should not be convicted of the said offence charged in the said information. Given under my hand and seal the* ——— *day of* ——— *in the year of our Lord* ———.

C. C. Conviction of a person before one justice on 9 *G.* 2. *c.* 35. § 21., *ante*, p. 33., for carrying run or prohibited goods. Vide tit. "Conviction," Vol. I.

County of ——— BE *it remembered, that on the* ——— *day of* ——— *in the year of our Lord* ———, *at* ——— *in the said county,* A. I. *of* ——— *in the county of* ———, *labourer, personally came before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, and informed me that after the 24th day of* June 1736, *to wit, on the* ——— *day of* ———, *in the year of our Lord* ———, *at the parish of* ——— *in the said county, one* O. X. *being one of his majesty's officers of the customs* [or *excise*], *did find and seize upon and in the custody of* A. O. *late of* ——— *in the said county* [here set forth the goods found and seized], *of great value, to wit, of the value of* ——— *pounds of lawful money of* Great Britain, *being goods, wares, and merchandizes liable to the payment of the duties of customs* [or *excise*] *to and for the use of his majesty, which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of* ——— *aforesaid; and that the said* A. O. *was, at the time of such finding and seizing of the said goods, wares, and merchandizes at the parish aforesaid, employed in carrying the same, he the said* A. O. *well knowing the same goods, wares, and merchandize to have been clandestinely run and imported as aforesaid, contrary to the form of the statute in such case made and provided; whereby and by force of the said statute, the said* A. O. *hath forfeited the sum of* ——— *pounds, being treble the value of the said goods, wares, and merchandizes so found and seized as aforesaid, one moiety thereof to the said* A. I. *the said informer, and the other moiety thereof to* ———: *and the said* A. I. *who prosecutes as aforesaid prays that the said* A. O. *may be convicted of the said offence, and that one moiety of the said forfeiture may be adjudged to the said* A. I. *and the other moiety thereof to* ———, *according to the form of the statute in that case made and provided: Whereupon the said* A. O. *after being duly summoned to answer the said charge, appeared before me on the* ——— *day of* ——— *at* ——— *in the said county, and having heard the charge contained in the said information, declared he was not guilty of the said offence,* [or, *did not appear before me, pursuant to the said summons,* or, *did neglect and refuse to make any defence against the said charge,* or, as the case may be]; *Whereupon I the said* J. P. *did proceed to examine into the truth of the charge contained in the said information; and on the* ——— *day of* ——— *aforesaid, at the parish of* ——— *aforesaid, in the county aforesaid, one credible witness, to wit* A. W. *of* ——— *in the county of* ——— *upon his oath deposeth and saith* [if A. O. be present say, *in the presence of the said* A. O.] *that within* ——— *months* [or as the case may be] *next before the said information was made before me the said justice by the said* A. I. *to wit, on the* ——— *day of* ——— *in the year* ——— *the said* A. O. *at* ——— *in the said county of* ——— [here state the evidence, and as nearly as possible in the

words used by the witness, and if more than one witness be examined, state the evidence given by each: set forth the time, place, and manner of seizure, the circumstances to prove the goods to be run goods, &c. (and the want of a permit where a permit is required, is a material one:) also the circumstances to prove that the defendant knew them to be run goods, &c. and the value of the goods: or, if the defendant confess, instead of stating the evidence say, *and the said* A. O. *acknowledged and voluntarily confessed the same to be true*]; *Therefore it manifestly appears to me the said justice that he the said* A. O. *is guilty of the offence charged upon him, in and by the said information: it is therefore adjudged by me the said justice that the said* A. O. *be convicted, and he is hereby convicted by me the said justice of the said offence, charged upon him in and by the said information, according to the form of the statute in that case made and provided: and I do award and adjudge that the said* A. O. *for his said offence hath forfeited and do forfeit the sum of* ——— *pounds of lawful money of* Great Britain, *being treble the value of the said goods, wares, and merchandizes so found and seized as aforesaid, to go and be distributed, one moiety thereof to* ———, *and the other moiety thereof to the said* A. I. *the said informer, according to the form of the statute in that case made and provided. Given under my hand and seal, the* ——— *day of* ——— *in the year of our Lord* ———.

D. Warrant of distress before one justice, upon stat. 9 *G.* 2. *c.* 35. § 21., *ante*, p. 33., for carrying run or prohibited goods. D.

County of ——— } To the constable of —— in the said county.

WHEREAS by a certain conviction under my hand and seal, bearing date the —— *day of* —— *in the year of our Lord* ——, *one* A. O. *late of the parish of* ——, *in the said county, was and is duly convicted before me* J. P. *one of his majesty's justices of the peace in and for the said county, upon the information of* A. I. *of* —— *in the said county* ——, *who prosecuted as well for* —— *as for himself in this behalf, and upon the oath of* —— *a credible witness in that behalf, of a certain offence committed by the said* A. O. *for that after the twenty-fourth day of* June 1736, *to wit, on the* —— *day of* —— *in the year of our Lord* ——, *in the parish of* —— *in the said county, one* —— *being one of his majesty's officers of the customs* [if so] *did find and seize upon and in the custody of the said* A. O. [here set forth the goods found and seized], *of great value, to wit, of the value of* —— *pounds of lawful money of* Great Britain, *being goods, wares, and merchandizes liable to the payment of the duties of customs* [or *excise*], *which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of* —— *aforesaid; and for that the said* A. O. *was, at the time of such finding and seizing of the said goods, wares, and merchandizes at the parish aforesaid, employed in carrying the same, he the said* A. O. *then and there knowing the same goods, wares, and merchandizes to have been clandestinely run and imported as aforesaid, contrary to the form of the statute in such case made and pro-*

vided; and the said A. O. *was for his said offence by me adjudged to forfeit the sum of* —— *pounds of lawful money of* Great Britain, *being treble the value of the goods, wares, and merchandizes so found and seized as aforesaid, to be distributed and to go and be applied, one moiety thereof to the said* ——, *and the other moiety thereof to the said* A. I. *the said informer, according to the form of the statute in such case made and provided. These are therefore to command you to levy the said sum of* —— *pounds, being treble the value of the said goods, wares, and merchandizes so found and seized as aforesaid, by distress and sale of the goods and chattels of the said* A. O.*; and I do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of within* —— (a) *days, unless the said sum of* —— *pounds, for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby commanded to certify to me the said justice, on the* —— *day of* —— *next ensuing, what you shall do by virtue of this my warrant. Given under my hand and seal at* —— *aforesaid, in the county aforesaid, the* —— *day of* —— *in the year of our Lord* ——.

Return where no goods can be found, to be indorsed on the back of the warrant.

I A. C. *constable of the parish of* —— *in the county of* ——, *do hereby certify and make oath that, by virtue of this warrant, I have made diligent search for the goods of the within-named* A. O., *and that I cannot find sufficient goods and chattels whereon to levy the within sum of* ——. *As witness my hand, the* —— *day of* ——.

A. C.

Sworn before me, the day and year aforesaid, J. P.

And see Vol. I. tit. Distress. Stat. 5 *G.* 4. *c.* 18. § 2.

Return where part is levied.

I A. C. *constable of the parish of* ——, *in the county of* ——, *do hereby certify to* J. P. *the justice within named, that by virtue of the within warrant I have levied by distress and sale of the goods and chattels of the within-named* A. O. *the sum of* —— *pounds, in part of the within-mentioned sum of* —— *pounds, which said sum of* —— *pounds I have ready before the said justice, as within I am commanded; and I do further certify to the said justice that the said* A. O. *hath not any other goods or chattels whereon I can levy the residue of the said sum of* —— *pounds, or any part thereof. As witness my hand, this* —— *day of* ——.

A. C.

(a) By stat. 27 *G.*3. c.20. not more than eight, nor less than four days.

E. Commitment by one justice upon stat. 9 *G.* 2. *c.* 35. § 21., *ante*, p. 33., for want of distress, for carrying run or prohibited goods. E.

County of ——— { To the constable of —— in the said county, and to the keeper of the house of correction at ——, in the said county

WHEREAS A. O. *late of the parish of* ——— *in the said county, on the* ——— *day of* ——— *last past, was duly convicted before me* J. P. *one of his majesty's justices of the peace in and for the said county, upon the information of* A. I. *of* ———, *in the said county,* ———, *who prosecuted as well for* ——— *as for himself in this behalf, and upon the oath of* A. W. *a credible witness in that behalf, of a certain offence committed by the said* A. O. *for that after the* 24*th day of* June 1736, *to wit, on the* ——— *day of* ———, *in the year of our Lord* ———, *at the parish of* ———, *in the said county, one* ——— *being one of his majesty's officers of the customs* [or *excise*], *did find and seize upon and in the custody of the said* A.O. [here set forth the goods found and seized] *of great value, to wit, of the value of* ——— *of lawful money of* Great Britain, *being goods, wares, and merchandizes liable to the payment of the duties of customs* [or *excise*], *which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, the parish of* ——— *aforesaid, and for that the said* A. O. *was, at the time of finding and seizing the said goods, wares, and merchandizes at the parish aforesaid, employed in carrying the same, he the said* A. O. *then and there well knowing the said goods, wares, and merchandizes to have been clandestinely run and imported as aforesaid, contrary to the form of the statute in such case made and provided; and the said* A. O. *was, for his said offence, by me adjudged to forfeit the sum of* ——— *pounds of lawful money of* Great Britain, *being treble the value of the said goods, wares, and merchandizes so found and seized as aforesaid, to be distributed, and to go and be applied, one moiety thereof to* ———, *and the other moiety thereof to the said* A. I. *the said informer, according to the form of the statute in such case made and provided; and whereas on the* ——— *day of* ——— *last past, in the year aforesaid, I did issue my warrant to the constable of* ———, *commanding him to levy the said sum of* ———, *being treble the value of the goods, wares, and merchandizes so found and seized as aforesaid, by distress and sale of the goods and chattels of him the said* A. O., *and that the said constable should certify to me the said justice, on the* ——— *day of* ——— *now last past what he should do by virtue of my said warrant; and whereas it duly appears to me, by the return of* ———, *constable of* ——— *aforesaid, dated the said* ——— *day of* ——— *last past* (*), *that the said* A. O. *hath not any goods or chattels whereof he could levy the said sum of* ——— *or any part thereof, as by the said warrant is directed. These are therefore to command you the said constable of* ——— *aforesaid, to apprehend the said* A. O.

and him safely to convey to the house of correction at ——— aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction, to receive the said A. O. *into the said house of correction, and there to whip him and keep him to hard labour for the space of* ———, [at the discretion of the justice, not exceeding three months,] *and for your so doing this shall be your sufficient warrant. Given under my hand and seal at* ———, *this* ——— *day of* ———, *in the year of our Lord* ———.

F. F. General form of an information or complaint before two justices (*a*), upon stat. 12 *C.* 2. *c.* 24. § 45., *ante*, p. 59.

County of ——— } *BE it remembered, that this* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord King* George *the* ———, *at* ——— *in the said county, cometh* A. I. *of* ———, *gentleman, in his proper person, and as well for our said lord the king as for himself exhibited to us* (*a*) J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, residing near the place where the offence hereinafter mentioned was committed, an information and complaint, and thereby informeth us that at several times between the* ——— *day of* ——— *and the* ——— *day of* ——— [or, *on the* ——— *day of* ———, as the case may be] *now last past, one* A. O. *of the parish of* ——— *in the said county, yeoman, did* [here set forth the offence] *contrary to the form of the statute in such case made and provided, whereby he hath forfeited the sum of* ——— [here set forth the forfeiture]; *and thereupon the said* A. I. *who as well for his said majesty as for himself doth prosecute, humbly prays the judgment of us the said justices in the premises, and that he may have one moiety* [or as the case may be] *of the said forfeiture, according to the form of the statute in such case made and provided, and that the said* A. O. *may be summoned to answer the said premises, and to make defence therein before us the said justices.* A. I.

Exhibited before us the day and year first above written. J. P.
K. P.

G. G. General form of a summons upon stat. 12 *C.* 2. *c.* 24. § 45., *ante*, p. 59.

County of ——— } To *A. O.* ——— in the said county, yeoman.

WE J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, do hereby give you notice, that* A. I. *of* ———, *gentleman, hath this day exhibited before*

(*a*) By stat. 3 *G.*4, *c.*23. § 2. Vol. I. tit. Conviction. One justice may receive the information, &c.

us an information against you for the sum of ——— [here set forth the forfeiture] *by you incurred, for and by reason of your* [here set forth the offence], *contrary to the form of the statute in such case made and provided, you are therefore hereby required to appear before us at the house of* ———, *known by the sign of the* ——— *in* ——— *in the said county, on the* ——— *day of* ——— *now next ensuing, at* ——— *of the clock, in the* ——— *noon of the same day, then and there to answer to the said information, and to make defence thereto; but if you neglect to appear, we shall proceed as if you were personally present. And we do further authorize and require Mr.* O. X., *officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place aforesaid, then and there to make a return thereof to us the said justices. Given under our hands the* ——— *day of* ——— *in the year of our Lord* ———.

H. Form of a Record of Conviction upon Stat. II. 12 *C.* 2. *c.* 24. § 45., *ante*, p. 59. *Vide tit.* Conviction, Vol. I. H.

County of ——— BE *it remembered, that on this* ——— *day of* ———, *in the year of our Lord* ———, A. I. *one of his majesty's collectors of excise* [or whoever is the informer] *in his proper person cometh before us* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, and informs us that* A. O. *of* ——— *in the said county,* ———, *within the space of* ——— *now last past, that is to say, on the* ——— *day of* ——— *at the parish of* ——— *in the said county, did* [here set forth the offence] *contrary to the form of the statute in that case made and provided, whereby, and by force of the said statute, the said* A. O. *hath forfeited for his said offence the said sum of* ——— *pounds, one moiety thereof (all necessary charges for the recovery thereof being first deducted) to his majesty, and the other moiety thereof to the said* A. I. [or as the case may be]; *and the said* A. I. *prays that the said* A. O. *may be convicted of the said offence, according to the statute in that case made and provided; whereupon the said* A. O. *after having been duly summoned to answer the said charge, appeared before us on the* ——— *day of* ——— *at* ——— *in the said county, and having heard the charge contained in the said information, declared he was not guilty of the said offence,* [or, as the case may happen to be, *did not appear before us pursuant to the said summons* [or, *did neglect and refuse to make any defence against the said charge*]; *whereupon we the said* J. P. *and* K. P. *so being such justices as aforesaid, did proceed to examine into the truth of the charge contained in the said information, and on the* ——— *day of* ——— *aforesaid, at the parish of* ——— *aforesaid, in the county aforesaid, one credible witness, to wit,* A. W. *of* ——— *in the county of* ——— *upon his oath deposeth and saith,* [if A. O. be present, say, *in the presence of the said* A. O.] *that within* ——— *months* [or, as the case may be] *next before the said information was made before us the said justices, by the said* A. I. *to wit, on the* ——— *day of* ——— *in the year* ——— *the said* A. O. *at* ——— *in the said county of* ——— [here state the evidence, and as nearly as possible in the words used by the witness, and if more than one

witness be examined, state the evidence given by each] [or, if the defendant confess, instead of stating the evidence, say, *and the said* A. O. *acknowledged and voluntarily confessed the same to be true*]; *therefore it manifestly appearing to us the said justices that he the said* A. O. *is guilty of the offence charged upon him in the said information; it is therefore considered and adjudged by us the said justices that the said* A. O. *be convicted, and he is accordingly convicted of the said offence charged upon him by the said information; and we do hereby adjudge that the said* A. O. *for the said offence hath forfeited the sum of* ——— *l. of lawful money of* Great Britain, *but we do mitigate the same to the sum of* ——— *l. and do adjudge and order that the said* A. O. *do pay the said sum of* ——— *l. to be distributed as the law directs. Given under our hands and seals the* ——— *day of* ——— *in the year of our Lord* ———.

I. **I.** Warrant of Distress for a Penalty upon Stat. 12 *C.* 2. *c.* 24. § 45. *ante*, p. 59.

County of ——— } To *O. X.* and *P. X.* officers of excise, and to either of them.

WE whose hands and seals are hereunto set, two of his majesty's justices of the peace in and for the said county, do in his said majesty's name authorize and command you or one of you that you seize upon the goods and chattels [or *utensils, &c.* as the case may be] *of* A. O. *of* ——— *in the county aforesaid,* ——— *and levy the sum of* ——— *l. of lawful money of* Great Britain, *by us mitigated and lessened from the sum of* ——— *l. of like lawful money* [if the case be so], *recovered against him by* A. I. *gentleman, who prosecuted as well for our sovereign lord the king as for himself for a certain offence committed by the said* A. O. *against the laws and statutes of excise whereof he the said* A. O. *is duly convicted before us, and for the levying thereof you are to seize, take, and carry away the goods and chattels* [or *utensils, &c.*] *aforesaid, and if in* ——— *days* [not less than four, nor more than eight days] *next after such seizure, the said sum of* ——— *l. together with the reasonable charges of taking and keeping the said goods and chattels* [or *utensils, &c.*] *shall not be paid, then and in such case after the expiration of the said* ——— *days you are to make sale thereof or of so much thereof as shall be sufficient to levy the said sum of* ——— *l., which when so levied you are forthwith to pay to the collector of excise of the district for the time being* [or, as the case may require], *to be by him distributed according to the statute in such case made and provided. And if any overplus shall remain of the money arising by such sale, you are to render such overplus to the said* A. O. *the reasonable charges of taking, keeping, and selling the said distress being first deducted. And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case sufficient distress cannot be found whereon to levy the said sum of* ——— *l., you are forthwith to certify the same unto us, together with a return of this precept. Given under our hands and seals the* ——— *day of* ——— *in the year* ———.

A Return of Want of sufficient Distress to be indorsed on the Back of the Warrant.

County of ——— I O. X. *one of the within named officers of excise do hereby certify to* J. P. *and* K. P. *esquires, the justices within mentioned, that by virtue of the within warrant I have made diligent search for the goods and chattels* [or *utensils,* &c.] *of the within named* A. O., *and that I can find none; and that I do not know or can find that the said* A. O. *hath any goods or chattels* [or *utensils,* &c.] *whereon the within sum of* ——— *may be levied. As witness my hand, the* ——— *of* ——— *in the year* ———.

K. Commitment for Want of Distress upon Stat. 12 *C.* 2. *c.* 24. § 45. *ante*, p. 59.

K.

County of ——— { To *O. X.* and *P. X.* officers of excise and to either of them, and to the keeper of the common gaol at ——— in the said county.

WHEREAS *we whose hands and seals are hereunto set, two of his majesty's justices of the peace in and for the said county, by our warrant under our hands and seals bearing date the* ——— *day of* ——— *now last past, did require and command you the said* O. X. *and* P. X., *or one of you, to levy the sum of* ———*l. therein mentioned upon the goods and chattels* [or *utensils,* &c. as the case may be] *of* A. O. *of* ——— *in the said county* ———. *And whereas you the said* O. X. *by a return and certificate under your hand bearing date the* ——— *day of* ——— *now last past have certified to us that diligent search hath been made for such goods and chattels,* [or *utensils,* &c.] *but that you can find none whereon to levy the said sum of* ———*l. or any part thereof. We the said justices do therefore in his said majesty's name require and command you the said* O. X. *and* P. X., *or one of you, to take the body of the said* A. O. *and him forthwith to carry to the common gaol at* ——— *in the said county, and there to deliver him into the custody of the keeper of the said common gaol, together with this warrant; and we the said justices do hereby also command you the said keeper of the said common gaol to receive into and safely keep in your custody in the said common gaol the body of the said* A. O. *until he shall pay the sum of* ———*l. of lawful money of* Great Britain, *by us mitigated and lessened from the sum of* ———*l. of like money by us the said justices adjudged against him, upon an information exhibited against him before us by* A. I. *gentleman, as well on behalf of his said majesty as of himself for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he stands convicted before us the said justices. And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof; and for so doing this shall be to you or any of you a sufficient warrant and authority. Given under our hands and seals the* ——— *day of* ——— *in the year of our Lord* ———.

L. **L.** Form of a Summons for Witnesses, upon Stat. 7 & 8 *W. c.* 30. § 24. *ante*, pp. 60, 61.

County of ——— } To *A. W. of* ———.

WHEREAS we whose hands and seals are hereunto set, being two of his majesty's justices of the peace in and for the said county, have received information, that A. O. *of* ——— *in the said county,* ———, *did on the* ——— *day of* ——— *now last past* [here set forth the offence], *and that you the said* A. W. *are a material witness to be examined concerning the same; these are therefore to command and strictly enjoin you the said* A. W. *that, all and singular business and excuses being laid aside, you be and appear in your proper person before us at the house of* ——— *at the sign of* ——— *in* ——— *in the said county on* ——— *the* ——— *day of* ——— *now next ensuing, at the hour of* ——— *in the* ——— *noon of the same day, to testify the truth and what you know concerning the premises; and this you are by no means to omit, under the penalty that will thereon ensue. Given under our hands and seals,* &c.

M. **M.** Form of an Information against several Victuallers in Arrears, *&c.*, for double Duties forfeited for not paying single Duties. See Stat. 12 *C.* 2. *c.* 24. § 31. *ante*, pp. 92, 93.

[PROCEED as at (F.) *ante*, p. 383., till where the offence is directed to be set forth, and then say,] *That the several and respective persons hereafter named in the first column here underwritten at several times between the* ——— *day of* ——— *and the* ——— *day of* ——— *both now last past, in the said county, that is to say, at the several towns and places hereafter mentioned in the said first column hereafter written, at the respective brewhouses, and places of brewing by them the said persons severally and respectively used at the said respective time and times, place and places, and to them there severally and respectively at the said time and times belonging, did severally and respectively brew the several and respective quantities of beer and ale, each above eighteen shillings the barrel, commonly called strong beer and ale, and also of beer, not above eighteen shillings the barrel, commonly called small beer, hereafter respectively written against each of their respective names in the two next columns; and that they the said several persons, at and during the respective time and times of such their respective brewing the said respective quantities of beer and ale, and of every part thereof respectively, were and yet are at the said respective towns and places, victuallers and tappers out and sellers of beer and ale, whereby and by virtue of several statutes in such case made, there did accrue and become due to his said majesty from them respectively, for and in respect of the said respective quantities of beer and ale so by them respectively brewed as aforesaid, certain rates, duties, and sums of money respectively, amounting to the several sums of lawful* British *money hereafter expressed in the fourth column, here-*

after written against each of their names respectively, which said rates, duties, and sums of money, so accrued and become due from them respectively as aforesaid, they the said several and respective persons, according to several and respective statutes in such case made, ought respectively to have paid and cleared off, to or for the use of his said majesty, within one month next after they respectively did make or ought to have made their respective entry or entries of the said beer and ale, so by them respectively brewed as aforesaid, or of any part thereof, or at any time since; but the said several and respective persons have wholly omitted and neglected to pay and clear off the same and every part thereof, contrary to the form of the said respective statutes; whereby they respectively have forfeited double the value of the said respective rates, duties, and sums of money by them respectively neglected and omitted to be paid as aforesaid, which said double values of the said respective duties and sums of money do amount to the several sums of money hereafter expressed, in the fifth column hereafter written; and thereupon the said A. I., *who as well, &c.*

1st Column.		2d Column.			3d Column.			4th Column.			5th Column.		
Names of the offenders, and the places of their abode and brewing.		Quantities of strong beer or ale above 18*s.* the barrel.			Quantities of small beer not above 18*s.* the barrel.			Sum due for the single duties.			The double value of the said duties.		
		Barrels.	Firkins.	Gallons.	Barrels.	Firkins.	Gallons.	£.	*s.*	*d.*	£.	*s.*	*d.*
Robert Bowness of Orton	-	3	1	0	7	2	0	1	6	3	2	12	6
Thomas Home of ditto	-	5	3	0	9	1	0	2	1	1	4	2	2
John Sisson of Febay	-	4	1	0	7	3	0	1	11	7	3	3	2
John Noble of Langdale	-	6	0	0	4	0	0	1	5	4	2	10	8

The sums to be according as the duties may be.

[*N. B.* Each offender must have a separate summons, judgment or conviction, warrant of distress, &c., (if necessary) which may be easily made out from the forms at letters G. H. I. K.]

N. Form of a Conviction of an Auctioneer for selling without a Licence, on Stat. 19 G. 3. *c.* 56. § 4. *ante*, p. 105. N.

[PROCEED as in the precedent at letter (H.) *ante*, p. 385., until where the offence is directed to be set forth, and then say,] *did exercise the business of an auctioneer, and put up to public sale by way of auction, and did then and there vend and sell by public sale by way of auction divers goods and effects, without having first taken out a licence in the manner prescribed by the statute in that case made* [so proceed as in the said precedent to the examination of the witness,

and then say,] *that on the ——— day of ——— he saw the said* A. O. *exercise the business of an auctioneer in the market-place in the time of market, in the town of ——— in the county aforesaid, and that the said* A. O. *was then and there putting up and offering goods to public sale by way of auction and did then and there sell publicly several goods by way of auction, and outcry to the persons then and there assembled, and who were the best and highest bidders for the same; and that he this deponent then and there became the best and highest bidder for and did accordingly buy of the said* A. O. *by way of auction at the said sale one lot of goods or wares consisting of ———, for which he this deponent paid unto the said* A. O. *the sum of ———* [or as the case may be]. *And the said* A. O. *does not produce any evidence,* &c.

O. O. Conviction of Glass-makers, on Stat. 19 *G.* 2. *c.* 12. § 15. for double Duties, *ante*, p. 155.

[PROCEED as in the precedent at letter (H.) *ante*, p. 385., until where the offence is directed to be set forth, and then say,] A. O., B. O., *and* C. O., *partners at a glass-house there belonging to and used by them, did make use of ——— weight of materials, or metal for making white or flint glass, and that there did accrue and become due to his said majesty from the said* A. O., B. O., *and* C. O., *for the duty of the said materials and metal made into glass as aforesaid, ———l. of good and lawful money of* Great Britain; *which sum so accrued or any part thereof the said* A. O., B. O., *and* C. O., *have not paid or cleared off to or for the use of his said majesty within six weeks next after they, according to the form of the statute, did make or ought to have made their entry or entries of the said materials and metal made into glass as aforesaid or any part thereof, or at any time since, but the same yet remains wholly due and unpaid, contrary to the form of the statute,* &c.; *whereby they have forfeited double the value of the said duty remaining unpaid as aforesaid, that is to say, ——l. of like lawful money, and thereupon the said* A. I. *prays, that the said* A. O., B. O., *and* C. O., *may be convicted;* [so proceed as in the said precedent to the examination of the witnesses, and then say,] *that he the said* A. W. *being officer of excise did between the ——— day of ——— and the ——— day of ———, in the said ——— year of the reign,* &c. *survey the materials or metals in the glass-house of the said* A. O., B. O., *and* C. O., *in the parish of ——— in the county aforesaid, and that the said* A. O., B. O., *and* C. O., *during the said last-mentioned times, did there make use of ——— weight of materials or metal in the making of white or flint glass, and that there did accrue and become due to his said majesty from the said* A. O., B. O., *and* C. O., *for the duty of the said materials and metal made into glass as aforesaid, ———l. of lawful money of* Great Britain; *which sum so accrued, or any part thereof, the said* A. O., B. O., *and* C. O., *have not paid or cleared off to or for the use of his said majesty within six weeks next after they, according to the form of the statute in that behalf made, did make or ought to have made their entry or entries of the said materials and metal made into glass as aforesaid, or any part thereof, or at any time since, but the same yet remains wholly due and unpaid* [or as the proof may be]. *And thereupon the said* A. O., B. O., *and* C. O., *being called,* &c.

P. Conviction for adulterating Hops, on Stat. 7 *G.* 2. *c.* 19. § 2. *ante*, p. 184. P.

[PROCEED as in the precedent at letter (H.) *ante*, p. 385., until where the offence is to be set forth, and then say,] *did mix with* ——— *weight of hops a certain ingredient, to wit, the vapour of sulphur and brimstone, to alter the colour of the said hops, which ingredient then and there did alter the colour of the said hops, against the form of the statute in that case made and provided; whereby and by force of the said statute the said* A. O. *hath for his said offence forfeited the sum of five pounds, one moiety thereof to our said lord the king, and the other to the said* A.I. *the said informer; and the said* A. I. *prays*, &c. [so proceed as in the said precedent to the examination of the witness, and then say,] *that on the* ——— *day of* ——— *he the said* A.W. *by the order of the said* A.O. *threw* ——— *pound weight of brimstone upon the fire which was then using for the purpose of drying* ——— *weight of hops belonging to the said* A. O. *in a certain hop oast, situate at* ———, *which brimstome was so put on the said fire for the purpose of making the said hops have a better colour; and he the said* A. W. *on his oath aforesaid saith that the vapour and fume of the said brimstone ascended to the hops placed over such fire, and the hops being then in a moist state such fume and vapour settled and fixed on the hops and mixed with the same, whereby the colour thereof was changed, and the hops appeared brighter than they would have appeared, if they had not been so mixed with the fume and vapour of brimstone* [or as the proof may be]. *And he the said* A. O. *being called, &c.*

N. B. All proceedings for the recovery of penalties, &c. under the laws relating to the Customs and Excise being regularly instituted and conducted by the proper officers, under the direction and control of the Commissioners, who supply their own forms of Informations, Summonses, Convictions, and Warrants, for which they are of course responsible, it has not been thought necessary to add to those which have appeared in former editions of this work, and especially as the officers will not permit an Information to be laid, or a Conviction to be drawn out, except in their own forms.

Execution.

WHERE a person attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution should not be awarded against him, if he deny that he is the same person, it shall immediately be tried by a jury returned for that purpose. 2 *Haw. c.* 51. § 3. — *Vid. Ratcliff's case, Fost.* 40, 41. 1 *Bla.* R. 3. S. C.; but see Lord Kenyon's observations in this case in *Duberley* v. *Gunning, Peake's* C. N. P. 98.

The court may command execution to be done, without any writ. 2 *Haw. c.* 51. § 4.

In fixed and stated judgments, the law makes no distinction between a peer and a commoner, or between a common and ordinary case, and one attended with extraordinary circumstances; for which reason it was adjudged in *Felton*'s case, who murdered the duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the sentence that his body should be hanged in chains, but that the body after execution, being at the king's disposal, might be hung in chains, or otherwise ordered as the king should think fit. 2 *Haw. c.* 48. § 2.

An execution cannot be lawfully executed by any but the proper officer. 2 *Haw. c.* 51. § 6. — 2 *Hale,* 411.

It must be done pursuant to the judgment, and cannot be altered by the king, as from beheading to hanging. *Hale's Sum.* 272. — 2 *Hale,* 411.

But the king may pardon part of the execution; as in treason he may pardon all but the beheading. *Hale's Sum.* 272. — 2 *Hale,* 412.

He may alleviate, but cannot aggravate, punishment beyond the intention of the law. *Fost.* 269.

It is clear that if a man, condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw. c.* 51. § 7.

For execution in cases of Murder, see Homicide.

Exigent. See Process.

Extortion.

[Stats. 3 Ed. 1. c. 26. — 31 El. c. 5.]

IT is said that extortion, in a large sense, signifies any oppression under colour of right; but that in a strict sense it signifies the taking of money, by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. 1 *Haw. c.* 68. § 1.

3 Ed. 1. c. 26. And by stat. 3 *Ed.* 1. *c.* 26. (which is only in affirmance of the common law) *No sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth shall yield twice as much, and shall be punished at the king's pleasure.*

No sheriff nor other the king's officer] Under these words, the law beginning with the *sheriffs*, are understood escheators, coroners, bailiffs, gaolers, and other *inferior officers* of the king, whose offices were instituted before the making of this act, which do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service. 2 *Inst.* 209.

Also the justices of the peace, whose office was instituted after this act, are bound by their oath of office to take nothing for their office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute.

And generally, no public officer shall take any other fees or rewards for doing any thing relating to his office than some statute in force gives him, or else as hath been anciently and accustomably taken; and if he do otherwise, he is guilty of extortion. *Dalt.* *c.* 41. — 1 *Russ.* 222.

But where a person was appointed collector of certain duties under stat. 43 *G.* 3. *c.* 99. by the proper constituted authorities, and considered himself and was considered by those authorities to be such collector, but whose appointment was informally made, it was decided that he could not be indicted at common law for the receipt of duties *by colour and pretence of being collector* of such duties, though the money were fraudulently collected and misapplied by him, because he was in fact appointed collector, and in that character received the money. *R.* v. *Dobson.* — 7 *East*, 218.

Shall take any reward] Therefore by this statute, they can at this day take no more for doing their office than hath been since allowed to them by authority of parliament. 2 *Inst.* 210.

All prescriptions which have been contrary to this statute, and to the common law in affirmance of which it is made, have been always holden to be void. 1 *Haw.* *c.* 68. § 2.

It has been resolved, that a promise to pay them money for doing of a thing, which the law will not suffer them to take any thing for, is merely void. 1 *Haw.* *c.* 68. § 2.

To do his office] It is not said, that he shall take no reward generally, but no reward to do his office: thus the fee of 20*d.* called bar fee, time out of mind taken by the sheriff of every prisoner that is acquitted, is not against this statute; for it is not taken for doing his office. 2 *Inst.* 210.; but see stat. 14 *G.* 3. *c.* 20. *post*, p. 396. and 55 *G.* 3. *c.* 50. § 4. *post*, tit. Gaols, &c. § IV.

But there seems to be no necessity for this distinction; for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers; the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to known and stated fees, settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. 1 *Haw.* *c.* 68. § 3.

But in the ecclesiastical court a person was libelled against for fees, and upon motion a prohibition was granted, for that it was holden that no court had a power to establish fees; the judge of a court may think them reasonable, but that is not binding; but

if on a *quantum meruit* a jury think them reasonable, then they become established fees. *Gifford's case*, 1 *Salk*. 333.

The fees in sessions, for traversing, trying, or discharging indictments, discharging recognizances, and the like, do vary according to the different customs in different places. *Dalt. c.* 41.

Shall yield twice as much] At the common law this offence is severely punishable at the king's suit by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law did give; for hereby the plaintiff shall recover his double damages. 2 *Inst*. 210.—1 *Haw. c.* 68. § 5.

31 El. c. 5. And by stat. 31 *El .c.* 5. Actions for extortion may be laid in any county.

At the king's pleasure] That is, by the king's justices, before whom the cause depends. 2 *Inst*. 210.

Indictment for Extortion in a Gaoler.

County of ——— } *THE jurors for our lord the king upon their oath present, that* A. O. *late of* ——— *in the said county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was taken upon suspicion of having committed a certain felony, by* ——— *constable of* ——— *in the said county, by virtue of a warrant directed to the said* ——— *under the hand and seal of Sir* William Dalston, *knight, then and yet one of the justices of our sovereign lord the king assigned to keep the peace in the said county, and was on the same day in the year aforesaid committed by him the said Sir* William Dalston *to* A. G. *keeper of the gaol of our said sovereign lord the king at* ——— *in the said county, under the custody of him the said* A. G. *to be safely kept, upon suspicion of the felony aforesaid, and the said* A. O. *was detained in that prison under the custody of the said* A. G. *from the time that he was committed to the said prison for one month from thence next ensuing, upon suspicion of the said felony; nevertheless the said* A. G. *being such keeper as aforesaid, in no wise regarding the statute in that case made, and the penalty therein contained, did on the* ——— *day of* ——— *at* ——— *aforesaid, in the said county, demand and receive* ——— *pounds of lawful money of* Great Britain *of and from the said* A. O. *for ease and favour in the said gaol for the said time, in contempt of our said sovereign lord the king, and against the form of the statute aforesaid, and against the peace of our said sovereign lord the king, his crown and dignity.*

Indictment for Extortion of a Bailiff.

County of ——— } *THE jurors for our lord the king upon their oath present that* A. B. *late of* ——— *in the said county, yeoman, being bailiff of the hundred of* ——— *in the said county, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *in the said county, by pretext and colour of his said office, did unjustly and by extortion take and extort 5s. of one* A. I. *of* ——— *in the said county, yeoman, one of the freeholders qualified to serve upon juries in the said county, to excuse the said* A. I. *from attending or appear-*

ing at the assizes that were then next to be holden in and for the said county, when in fact the said A. I. *was not returned by the sheriff of the said county in any panel of jurors, and also when indeed no such sum of money was due to the said* A. B. *for his fee for excusing the attendance or appearance of the said* A. I. *at the assizes aforesaid, to the evil example of other offenders, to the great damage of him the said* A. I., *and against the peace of our said lord the king, his crown and dignity.*

False Pretences. } See Vol. I. tit. Cheat.
False Tokens. }

Fast Days.

BY stat. 2 & 3 *Ed.* 6. *c.* 19. For the encouragement of the fisheries, and the increase of cattle, and stat. 5 *El. c.* 5., intituled "An act touching politic constitutions for the maintenance of the navy," and by stat. 35 *El. c.* 7. certain restrictions were imposed with regard to eating on certain fast days; but these statutes have long since fallen into disuse, and may be deemed obsolete.

Fees. See Extortion.

Felo de se. See Homicide.

Felony, &c.

I. *Felony.*
[14 G. 3. c. 20.]
II. *Misprision of Felony.*
III. *Theftbote, or compounding.*
IV. *Rewards for apprehending Felons.*
[5 Ann. c. 31. — 4 & 5 W. 3. c. 8. — 6 & 7 W. 3. c. 17. — 10 & 11 W. 3. c. 23. — 3 G. 1. c. 15. — 6 G. 1. c. 13. — c. 23. — 8 G. 1. c. 18. — 9 G. 1. c. 22. — c. 23. — c. 28. — 8 G. 2. c. 16. — 9 G. 2. c. 35. — 14 G. 2. c. 6. — 15 G. 2. c. 28. — 16 G. 2. c. 15. — 8 G. 3. c. 15. — — 24 G. 3. 56. — 58 G. 3. c. 70. — 1 G. 4. c. 115.]

As to trials of felonies committed on board vessels employed on inland navigations, stage coaches, and stage waggons, &c., or on the boundaries of counties, see stats. 59 *G.* 3. *c.* 27. and *c.* 96. *tit.* Indictment. Vol. III.

I. Felony.

FELONY is supposed by some to come from the Saxon *fel*, which signifieth fierce or cruel; of which the verb *fell* signifieth to throw down or demolish; and the substantive of that name is used Definition.

to signify a mountain rough and uncultivated. But the same word, with a little variation, runneth through most of the *European* languages, and signifieth more generally an offence at large; and the Saxon word *fællan* signifieth to offend, and *fellnissæ* an offence or failure; and although *felony*, as it is now become a technical term, signifieth in a more restrained sense an offence of a high nature, yet it is not limited to *capital* offences only, but still retaineth somewhat of this larger acceptation; for petit larceny is felony, although it is not capital.

According to Sir *Henry Spelman*'s observation, it signifies such an offence for which during the feudal institution a man should lose or forfeit his estate; which he derives of two nothern words, *fee*, which signifies the fief, feud, beneficiary estate, and *lon*, which signifies price or value.

It would swell this title nearly to the size of half the book, to set down every thing which may be comprehended under the word *felony;* therefore it is necessary to refer the consideration of the several particular kinds of felonies to their respective titles; as for instance, *Burglary, Coin, Forgery, Homicide, Rape, Robbery*, and many others (*a*); and especially the law relating to stolen goods of all kinds belongs to title *Larceny*.

The method of bringing a felon to justice, from the first commission of the felony to his condemnation and execution, is treated of under the several titles of *Appeal, Arraignment, Arrest, Attainder, Bail, Clergy, Commitment, Confession, Evidence, Examination, Execution, Forfeiture, Gaol, Hue and Cry, Indictment, Judgment, Jurors*. And the course and whole procedure of trying an offender is treated of under the title Sessions, Vol. V.

The method of confining offenders to hard labour in penitentiary houses, or in vessels upon navigable rivers instead of transportation, is treated of under the title of Transportation.

As to the charge of Commitment, see that title, Vol. I. § IV.

Allowance of Expences of Prosecutions, see *stat.* 58 *G.* 3. *c.* 70. title Costs, Vol. I.

14 G. 3. c. 20. Prisoner acquitted to be discharged without fee.

By stat. 14 *G.* 3. *c.* 20. Every prisoner charged with any felony or other crime, or as accessary thereto, before any court holding criminal jurisdiction, against whom no bill of indictment shall be found by the grand jury, or who shall on trial be acquitted, or who shall be discharged by proclamation for want of prosecution, shall be immediately set at large in open court, without the payment of any fee or sum of money to the sheriff, gaoler, or keeper; and such fees as have been usually paid shall cease; and in lieu of such fees the treasurers or proper officers of the county, or of such districts, hundreds, ridings, or divisions of a county as are not usually assessed to the county at large, and of such cities, towns corporate, cinque ports, liberties, franchises, and places not paying to the county rates, shall pay such sum as has been usually paid on that occasion, not exceeding 13*s.* 4*d.* for each prisoner, on certificate signed by a judge or justice before whom such prisoner shall have been discharged, out of the general county rate,

(*a*) N. B. By stat. 52 *G.* 3. *c.* 143. all the provisions contained in any laws imposing the penalty of death for any act done in breach of, or in resistance to, any laws for collecting his majesty's revenue are consolidated. See titles Excise, Post Office, &c.

or public stock of such city, &c. *See also* 55 *G*. 3. *c*. 50. § 4. title Gaols, § XI. *post.*

II. Misprision of Felony.

Misprision of felony (from the *French* word *mespris*, a neglect or contempt,) is the concealing of a felony which a man knows, but never consented to; for if he consented, he is either a principal or accessary in the felony, and consequently guilty of misprision of felony, and more. 3 *Inst*. 36. 1 *Hale*, 374.

For it is said that every felony includes misprision of felony, and may be proceeded aga nst as a misprision only, if the king please. 1 *Haw*. *c*. 59. § 1.

The punishment of misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the king's pleasure, by the statute of *Edw*. 1. *c*. 9.

If any person will save himself from the crime of misprision, he must discover the offence to a magistrate with all speed that he can. 3 *Inst*. 140.

Misprision in a larger sense is used to signify very considerable misdemeanour, which hath not a certain name given to it in the law.

III. Theftbote or Compounding.

Theftbote (from the *Saxon* words *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends, not to prosecute. 1 *Haw*. *c*. 59. § 5. 1 *Russ*. 210.

But the bare taking of one's own goods again, which have been stolen, is no offence, unless some favour be shewn to the thief. 1 *Haw*. *c*. 59. § 7.

This offence is very nearly allied to felony, and is said to have been anciently punished as such; but at this day it is punishable only with ransom and imprisonment, unless it were accompanied with some degree of maintenance given to the felon, which makes the party an accessary after the fact.

IV. Rewards for apprehending Felons. (*a*)

58 G. 3. c. 70. Rewards on convictions of certain crimes abolished.

By stat. 58 *G*. 3. *c*. 70. The several rewards allowed by the five undermentioned statutes are abolished.

1. By 4 *W*. & *M*. *c*. 8. § 2. 40*l*. on the conviction of every highwayman.

2. By 6 & 7 *W*. 3. *c*. 17. § 9. 40*l*. on the conviction of a person who has counterfeited or clipped the coin, or has brought into the kingdom clipped or counterfeit coin.

3. By 5 *Ann*. *c*. 31. § 1. 40*l*. on the conviction of every burglar or house-breaker.

4. By 14 *G*. 2. *c*. 6. § 2. 10*l*. on the conviction of every sheep-stealer, &c.

(*a*) See title Costs, Vol. I.

58 G.3. c.70. 5. By 15 *G.*2. *c.*28. § 7. 40*l.* on the conviction of any person of treason or felony, relating to the coin upon this act; and 40*l.* upon conviction for counterfeiting copper money.

4 W. c.8. Apprehending Highwaymen. But by stat. 4 *W.* & *M.* *c.*8. § 3. If any person be killed in endeavouring to apprehend a highwayman, the sheriff shall pay the sum of 40*l.* to the executors or administrators of the person so killed, immediately upon the delivery of a certificate to him under the hand and seal of the judge of assize for the county where the fact was done, or of the two next justices of the peace, of such person being so killed.

And by § 6. As a further reward, every person so apprehending and prosecuting shall have the horse, furniture, and arms, money, or other goods, of the robber, that shall be taken with him, notwithstanding any right of the crown, or of the lord of the manor, or of those who lend or let the same to hire to such robber. But this shall not take away the right of any person to such horse, &c. from whom the same was before feloniously taken.

6 & 7 W. c.17. For discovering coiners. By stat. 6 & 7 *W.*3. *c.*17. § 12. If any person being out of prison shall be guilty of clipping, coining, counterfeiting, washing, &c. the gold or silver coin of this realm, and afterwards discover two or more persons who have committed any of the said crimes, so as two or more be convicted, he shall have the king's pardon; and if he be an apprentice, he shall be made a freeman.

15 G.2. c.28. By stat. 15 *G.*2. *c.*28. § 8. The king's pardon is also offered in like manner to persons under similar circumstances, who discover two or more offenders in altering sixpences or shillings to make them look like half guineas or guineas; or altering farthings or halfpence to make them look like sixpences or shillings; or counterfeiting brass or copper halfpence or farthings; or uttering false money.

5 Ann. c.31. By stat. 5 *Ann.* *c.*31. § 2. If any watchman or other person be killed in endeavouring to apprehend any burglar or housebreaker, his executors or administrators shall have a certificate under the hand and seal of the judge, or of the two next justices of the peace, of such person being so killed, (which certificate they shall give without fee,) on sufficient proof made before them, where upon such executor or administrator shall be entitled to receive the sum of 40*l.* from the sheriff of the county where the fact was committed.

Felon discovering two or more felons, shall, on their conviction, be entitled to the king's pardon. § 4. If any person being out of prison, shall commit any burglary or felony as aforesaid, (viz. housebreaking in the day-time), and afterwards discover two or more such offenders, so as two or more be convicted, such discoverer shall have all advantages promised to the prosecutor, and also the king's pardon for all burglaries, robberies, and felonies (except murder and treason), by him committed before such discovery.

8 G.2. c.16. Reward for apprehending a felon. By stat. 8 *G.*2. *c.* 16. § 9. Whoever shall apprehend a felon (robber) described by and within the time limited in the act, (and by § 3. the hundred is not liable if the robber be apprehended within 40 days after notice in the gazette,) whereby the hundred is actually discharged, shall on proof thereof, on oath before two justices, have a reward of 10*l.* from the hundred; the same to be ascertained, levied, and paid by two justices (1 Q.) in or near the

hundred, in such proportions as they think reasonable within the hundred.

By stat. 10 & 11 *W.* 3. *c.* 23. § 2. Whoever shall take and prosecute to conviction any person, who by night or day shall, in any shop, warehouse, coach-house, or stable (*a*), privately and feloniously steal any goods, wares, or merchandizes of the value of 5*s.* (though such shop, &c. be not broke open, and though no person were therein to be put in fear), or shall assist, hire, or command any person to commit such offence, shall have a certificate thereof *gratis* from the judge or justices, &c. certifying in what parish or place the felony was committed, and that the felon was discovered and taken, or discovered or taken by such person; and if any dispute shall arise touching the right to such certificate, the judge or justices shall direct and appoint the said certificate into so many shares to be divided amongst the persons therein concerned as to the said judge, &c. shall seem just; which certificate may be once assigned over and no more; and the original proprietor or assignee shall by virtue thereof, and of this act, be discharged from all and all manner of parish and ward offices within the parish or ward wherein such felony was committed; and the certificate shall be enrolled with the clerk of the peace on paying the fee of 1*s.* *Sed vide post.* stat. 58 *G.* 3. *c.* 70. § 2. 10 & 11 W. c. 23. Privately stealing in shops, &c,

§ 4. If any person shall be slain in endeavouring to apprehend such felon, the executors or administrators of such person, or those to whom the right of administering to the personal estate belongs, shall have the like certificate, without fee.

But by stat. 58 *G.* 3. *c.* 70. § 2. No certificate which shall be granted pursuant to stat. 10 & 11 *W.* 3., to any person or persons who shall apprehend and take and prosecute to conviction any person guilty of any of the felonies therein-before mentioned, to discharge such person or persons so apprehending and prosecuting from parish and ward offices, shall be assignable or transferable by the person or persons to whom such certificate shall be originally granted, to any person or persons whomsoever; nor shall any such certificate or certificates exempt or discharge from parish or ward offices any other person or persons whomsoever than the person or persons to whom the same was originally granted. 58 G. 3. c. 70. Certificates granted under 10 & 11 W. 3. c. 23. not to be transferable.

§ 3. Nothing herein contained shall extend to take away from or deprive the executors or administrators of any person or persons who shall happen to be killed by any robber endeavouring to apprehend or in making pursuit after him, of any reward or rewards to which the executors or administrators of any person or persons so happening to be killed would be entitled by stat. 4 *W.* & *M.* *c.* 8.; nor to deprive any person or persons of the horse, furniture and arms, money or other goods, of any robber or robbers, and which by the same statute are directed to become the property of any person or persons who shall take, apprehend, prosecute, or convict any such robber as therein mentioned; nor shall any thing herein contained extend or be construed to extend to deprive the executors or administrators of any watchman or any other person who shall happen to be killed by any burglar Saving to the executors of persons killed by robbers, &c

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(*a*) Under this statute, those who apprehend *horse-stealers* are entitled to a certificate. 3 M. S. Sum. 412.

58 G.3. c.70. or housebreaker endeavouring to apprehend or in making pursuit after him or them, of any reward or rewards to which such executors or administrators would be entitled by virtue of stat. 5 *Ann.* c. 31. (See page 398.)

By § 4. The court before whom any person is tried for any felony is empowered to order payment of expences of the prosecution. See title Costs, Vol. I.

To be paid by the sheriff of the county. By § 5. In case the said judge, justices, or court, shall make any order and direction for the payment of any such sum or sums of money to any person or persons concerned in the apprehension and taking of any person or persons accused of any of the offences in the said herein-before recited acts mentioned, or any of them, the same shall be paid by the sheriff of the county in which the offence shall have been committed, and in like manner, upon the like certificate, and at the same period of time as the rewards are directed to be paid by the said recited acts of 4th *W.* & *M.*, 6th of *W.* 3., 5th of *Ann.*, the 3d and 14th and 15th *G.* 2.; and every such certificate shall be made out by the clerk of assize or clerk of the peace respectively, and be forthwith delivered to the person or persons entitled to the same, upon payment of the sum of 5*s.* for each such certificate; and the sheriff of the county, upon payment of the sum of money specified in such certificate, shall be reimbursed the said sum of money in like manner as is directed by the said several and respective acts herein-before recited.

9 G.1. c.22. Offender under the Black Act. By stat. 9 *G.* 1. *c.* 22. § 12. If any person shall apprehend, or cause to be convicted, any person offending against that act, and shall be killed or wounded so as to lose an eye, or the use of any limb, in apprehending or securing, or endeavouring to apprehend or secure, such offender, upon proof made at the general quarter sessions where the offence shall be committed, or the party killed or wound received by the person so apprehending, and causing the conviction, or the person so wounded, or the executor or administrator of the party killed, the justices at sessions shall give a certificate thereof to such persons, or executors, or administrators; by which certificate they shall be entitled to receive of the sheriff 50*l.*; which sum shall be allowed to the sheriff on passing his accounts in the exchequer; if the sheriff do not pay the money within 30 days after the certificate is shewn to him, he shall forfeit 10*l.*; for which said sum of 10*l.* as well as that of 50*l.*, such person may recover from the sheriff in an action for money had and received to his use.

Convicts. By stat. 16 *G.* 2. *c.* 15. § 3.—8 *G.* 3. *c.* 15.—24 *G.* 3. *c.* 56. § 5. 13. Whoever shall discover, apprehend, and prosecute to conviction any felon or other offender ordered for transportation, or who has agreed to transport himself, and who shall be afterwards at large in *G. B.*, without some lawful excuse, before the expiration of the term, shall be entitled to a reward of 20*l.* for every such offender, and shall have the like certificate as those who prosecute highwaymen to conviction.

Stolen goods. By stat. 6 *G.* 1. *c.* 23. § 9. Whoever shall discover, apprehend (*a*),

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(*a*) By stat. 1 *G.*4. *c.*115. All persons duly convicted of taking money or reward under pretence or upon account of helping any person to any stolen goods, &c. instead of being punishable with death under stat. 4 *G.*1. *c.* 11. § 4. shall be liable to be transported beyond the seas for life, or for such term, not less than

and prosecute to conviction of felony without benefit of clergy, any person for taking money or other reward to help persons to their stolen goods, (such offender not having apprehended the felon who stole the same, and brought him to trial, and given evidence against him), shall be entitled to a reward of 40*l.* for every offender so convicted; and shall have the like certificate and payment as persons who apprehend, &c., highwaymen. 6 G.1. c.23.

By stat. 9 *G.* 1. *c.* 28. Whoever shall prosecute to conviction any persons opposing the execution of process in a place called *Suffolk Place*, or the *Mint* in *Surry*, shall be entitled to a reward of 40*l.* for every offender, &c. as in the case of robberies, &c. 9 G 1. c.28. Opposing process in the Mint.

By stat. 9 *G.* 2. *c.* 35. § 11. 15. A reward of 50*l.* is given for apprehending smugglers, who oppose custom-house and excise officers by force of arms, &c. (upon conviction). To persons maimed, &c. in apprehending such offenders, the like sum, and also to the executors of persons killed in apprehending such offender. 9 G.2. c.35.

And by stat. 8 *G.* 1. *c.* 18. § 7. Runner of foreign goods who shall within two months after his offence (and before his conviction,) discover two or more of his accomplices to the commissioners of the customs or excise, so as the value of the goods recovered for the use of H. M. exceeds the sum of 50*l.*, shall have, on conviction of the accomplices, 40*l.* for each offender, and pardon. 8 G.1. c.18. Runner of foreign goods.

§ 8. Any person discovering such offender or offenders within three months after the offence is committed, so as the value of the goods recovered for the use of H. M. on such discovery exceeds the sum of 50*l.*, shall upon conviction receive 40*l.* over and above any other reward on account of the goods seized.

Parish and ward offices within the parish or ward.] Where a parish is part of a manor, the certificate does not exempt from offices relating to the manor. *Rex* v. *Derbyshire*, 2 *Burr.* 1182.

But when a parish consists of several *townships*, the exemption extends to the officers of the respective townships. *Moseley* v. *Stonehouse*, 7 *East*, 174.

R. v. *Davies*, *E.* 29 *G.* 2. *M. S.* (D.) Motion to quash a conviction and the affirmance of it on appeal removed into the K. B. by *certiorari*, upon this case. The defendant, being assignee of a certificate under this act, was appointed by the trustees under an act of the 22 *G.* 2. to be collector of the parish rates for the repair of the roads within the parish of *St. Leonard's*, *Shoreditch*, and refusing to take the office upon him, insisting that he was exempted by the benefit of his certificate, he was convicted before a justice; and this conviction being affirmed upon appeal to the sessions, it was now moved to quash those proceedings as illegal. After argument on shewing cause:—By *Ryder* Ch. J. The question is, whether the defendant has a right to be exempted from this office by virtue of his certificate? The act exempts the party and his assignee from all parish and ward offices. Here are two questions: First, whether this be a parish office? Secondly, whether it be within this act? And though the latter may seem to be a consequence of the former, yet it may be necessary to

seven years, as the Court shall adjudge; or shall be liable, in case the Court shall think fit, to be imprisoned only, or imprisoned and kept to hard labour in the common gaol, penitentiary house, or house of correction, for not exceeding seven years. See tit. Larceny, Vol. III.

R. v. Davies. consider whether this is the old office of surveyor or a new office. It is not necessary for a parish officer to be chosen by the parishioners. A parish office must be exercised about parish business; and the officer must be a parishioner; both which ingredients are here. It may be a question of nicety whether this act extends to new offices; though I give no opinion as to this point. The office is not coextensive with that of surveyor; but yet it seems part of that old office. It cannot be presumed that the 22 *G.* 2. meant to take away any privilege which the party had before. Therefore as I do not think this a new office, I think the conviction and affirmance thereof ought to be quashed; without giving any opinion, whether the exemption will extend to a new office, which did not exist at the time of the 10 & 11 *W.* — *Dennison* J. The question is, whether the collector of the parish rates in the parish within the 22 *G.* 2. is a parish officer within the benefit of the certificate under the 10 & 11 *W.*? I think the act of 10 & 11 *W.* ought to have a liberal construction. The office of surveyor is partly to be executed by this collector. And it is in fact an old office, divided by an act of parliament, and to be executed by two persons. And the collector is certainly as much a parish officer as the surveyor appointed under this act of parliament. A covenant to pay taxes extends to subsequent taxes of the same kind. So a privilege of persons from offices. The act does not confine it to offices in being. It was intended as a reward. Therefore the new-modelling an old office shall have the same benefit and constructions as the old office itself would be entitled to. — *Foster* J. This must certainly be taken to be a parish office; for the duty is confined to the parish, and to be executed by an inhabitant. I do not take it to be a new office; for it is part at least of the old one. I will go a little further, and suppose it an entirely new-created office; and yet if a parish office, I should think it within the 10 & 11 *W.* Clergymen, at common law, are exempted from all offices; and therefore would be exempted from the new offices. So an attorney's privilege extends to all matters of like nature. So dissenting ministers, being exempted from all offices by the toleration act, are exempt from new offices as well as old ones. — *Wilmot* J. The words of the act of 10 & 11 *W.* are as general as can be. Nothing can more contribute to the public safety than apprehending felons, which is the object of the act. It is not necessary to give an opinion; but I take it, if this had been a new office, it would have been within the exemption. This office has every badge of a parish office. It must be exercised by a parishioner within the parish; the rates are to be applied to a parochial purpose; and I think it not necessary that a parish officer should be appointed by the parish, as the constable is a parish officer, though not named by the parish. Nothing can be clearer than that this is part of the old office of surveyor. Therefore the conviction and affirmance thereof were quashed. See Forfeiture, *post*.

Information against a person for felony.

County of ——. } *THE information and complaint of* A. I. *of* —— *in the county of* ——, *yeoman, made on oath*

before me J. P. *esquire, one of his majesty's justices of the peace for the said county, the* ——— *day of* ——— *in the year* ———, *that yesterday in the night or early in the morning of this day divers goods of him the said* A. I. *to wit,* ——— *have feloniously been stolen, taken, and carried away from the house of him the said* A. I. *at* ——— *aforesaid in the county aforesaid, and that he hath just cause to suspect and doth suspect that* A. O. *late of* ———, *labourer, feloniously did steal, take, and carry away the same:* [or otherwise as the case shall be:] *And thereupon he the said* A. I. *prayeth that justice may be done in the premises.*

A. I.

Before me,
J. P.

Warrant for felony.

County of ———. } To ———, the constable of ———.

FORASMUCH as A. I. *of* ——— *in the county of* ———, *yeoman, hath this day made information and complaint upon oath before me* ———, *one of his majesty's justices of the peace for the said county, that this present day divers goods of him the said* A. I. *to wit,* ——— *have feloniously been stolen, taken, and carried away from the house of him the said* A. I. *at* ——— *aforesaid in the county aforesaid, and that he hath just cause to suspect and doth suspect that* A. O. *late of* ———, *labourer, feloniously did steal, take, and carry away the same:* [or otherwise as the case shall be.] *These are therefore to command you forthwith to apprehend him the said* A. O., *and to bring him before me to answer unto the said information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal the* ——— *day of* ——— *in the year* ———.

The form of a commitment for felony. See **Commitment**, Vol. I.

The form of a search warrant for stolen goods; see **Search Warrant**, Vol. V.

Feme Covert. See **Wife**, Vol. V.

Fern: Bnrning of it in forests. See **Burning**, Vol. I.

Fines and forfeited Recognizances.

See **Estreat**, Vol. I. and **Recognizance**, Vol. V.

[22 & 23 C. 2. c. 22.—3 G. 4. c. 46.—4 G. 4. c. 37.]

BY stat. 22 & 23 *C.* 2. *c.* 22. § 10. Where any fine or forfeiture shall be paid to any sheriff, clerk of assize, clerk of the peace, or other officer, and be certified and estreated into the exchequer, 22 & 23 C. 2. c. 22 Process for levying.

process shall be awarded to the sheriff against such person for levying the same.

3 G.4. c.46. Preamble.

By stat. 3 *G.* 4. *c.*46. § 1. After reciting stat. 22 & 23 *C.* 2. *c.* 22., intituled, *An act for the better and more certain recovery of fines and forfeitures due to his majesty*, which act was made perpetual by stat. 4 & 5 *W.* & *M.* *c.* 24., and also an act passed in the 41st year of the reign of his late majesty *Geo.* 3., intituled, *An act for better payment of fines and forfeitures imposed by justices out of sessions in* England: and whereas great delays occur in the return of fines, issues, amerciaments, forfeited recognizances, sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them, by or before any justices of the peace, or at any general or quarter sessions of the peace in that part of the U. K. called *England:* and whereas such delays impede the due administration of justice, as well as the recovery of the fines and forfeitures due to the crown thereupon, and it is therefore expedient that further provision should be made for the speedy and regular return of all such fines, issues, amerciaments, forfeited recognizances, and sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them; it is enacted, that from and after the 29th day of *September*, 1822, so much of the aforesaid act of 22 & 23 *C.* 2. as relates to fines, issues, and amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, imposed and adjudged at any quarter sessions of the peace; snd also such part of the aforesaid act of 4 & 5 *W.* & *M.* *c.* 24. as makes perpetual the aforesaid provisions contained in the said act of *C.* 2., and likewise so much of the said act 41 *G.* 3., as relates to the annual payment of all fines, forfeitures, and penalties, or such parts thereof as shall be due to the king, imposed and received by any justice out of sessions, and not made payable to any body or bodies corporate, or any commissioners of any public board, or any other person or persons, into the hands of the sheriff previous to the *Michaelmas* sessions; and also so much of the said act of the 41 *G.* 3. as requires such justices, previous to the *Michaelmas* sessions yearly, to transmit to the clerk of the peace, or town clerk where such fine was imposed, an account in writing of all such fines, shall be and are hereby repealed.

41 G.3. (U.K.) c.85.

So much of recited acts as relates to fines, &c. repealed.

Statements of fines, &c. to be forwarded to the clerk of the peace by the justice by whom such fine, &c. is imposed.

§ 2. Enacts, that from and after the 29th day of *September*, 1822, all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, (save and except the same shall, by virtue of any act or acts of parliament made or to be made, be otherwise directed to be levied, recovered, appropriated or disposed of,) which already are or hereafter shall be set, imposed, lost, or forfeited by or before any justice or justices of the peace in that part of the U. K. called *England*, shall be and are hereby required to be certified by the justice or justices of the peace by or before whom any such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, shall be set, imposed, lost, or forfeited to the clerk of the peace of the county, or town clerk of the city, borough or place, in writing, containing the names and residences, trade, profession or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such justice

or justices of the peace, on or before the ensuing general or quarter sessions of such county, city, borough, or place respectively; and such clerk of the peace or town clerk shall copy on a roll such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, together with all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them imposed or forfeited at such court of general or quarter sessions, and shall, within such time as shall be fixed and determined by such court, not exceeding 21 days after the adjournment of such court, send a copy of such roll, with a writ of *distringas* and *capias*, or *fieri facias* and *capias*, according to the form and effect in the schedule marked (A.) annexed to this act, (see p. 408.) to the sheriff of such county, or the sheriff, bailiff, or officer of such city, borough, or place having execution of process therein respectively, as the case may be, which shall be the authority to such sheriff of such county, or the sheriff, bailiff, or officer, as the case may be, for proceeding to the immediate levying and recovering of such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, on the goods and chattels of such several persons, or for taking into custody the bodies of such persons, in case sufficient goods and chattels shall not be found whereon distress can be made for recovery thereof; and every person so taken shall be lodged in the common gaol until the next general or quarter sessions of the peace, there to abide the judgment of the said court.

3 G.4. c.46. Clerk of the peace to copy on a roll such fines, &c. at quarter sessions, and send a copy of such roll, with writ of distringas, &c. to the sheriff, &c.

A.

§ 3. Enacts, that the clerk of the peace or town clerk shall, before he shall deliver the roll to such sheriff, bailiff, or officer, containing the fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, and is hereby required to make oath before any justice of the peace for the county, riding, city, borough, or place for which such clerk of the peace or town clerk shall act; which oath shall be indorsed on the back of the writ, or of the said roll attached thereto, such clerk of the peace or town clerk stating therein all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money which shall have been paid or otherwise accounted for; and such oath shall be made in the form following:—

Clerk of the peace or town clerk to make oath as to all fines, &c. which shall be paid.

I ——— make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances and forfeitures, which were set, lost, imposed, or forfeited, and in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding inserted in the said roll, and that in the said roll are also contained and expressed all such fines as have been paid to, or received by me, either in court or otherwise, without any wilful or fraudulent discharge, omission, misnomer, or defect whatever.

So help me God.

Form of oath.

§ 4. Enacts, that each and every justice of the peace before whom any recognizance shall be entered into or taken, shall and is hereby required to give, or cause to be given, at the time of entering into such recognizance, to the person or persons, surety or sureties so entering into the same, and to each of them, a written

Notice to be given to the sureties.

3 G.4. c.46.

B.

or printed paper or notice, in the form or to the effect stated in the schedule marked (B.) to this act annexed, (see p.408.) adapting the same to the particular circumstances of the case; and each and every such justice shall in such recognizance state and particularly specify not only the profession, art, mystery, or trade of every person so entering into such recognizance, together with their christian name and names and surnames, but also the parish, township, or place of his or her residence;] and in case such residence shall be in any city, town, or borough, shall also state and particularly specify the name of the street and number of the house (if any) in which such person shall reside, and also whether owner or tenant thereof, or lodger therein.

Persons may appeal to quarter sessions against fines, &c. upon giving security.

§ 5. Provides and enacts, that if any person on whose goods and chattels such sheriff, bailiff, or officer shall be authorized to levy any such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, shall give security to the said sheriff, bailiff, or officer for his appearance at the next general or quarter sessions, then and there to abide the decision of the court, and also to pay such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, together with all such expences as shall be ordered and adjudged by the court, it shall be lawful for such sheriff, bailiff, or officer, and he is hereby authorized and required to discharge such person so giving such security out of custody: Provided also, that in case such party so giving security shall not appear in pursuance of his undertaking, it shall be lawful for the court forthwith to issue a writ of *distringas* and *capias* or *fieri facias* and *capias*, against the surety or sureties of the person so bound as aforesaid.

Justices at quarter sessions to hear and determine such appeals.

§ 6. Enacts, that the court of general or quarter sessions before whom any person so committed to gaol or bound to appear shall be brought, is hereby authorized and required to enquire into the circumstances of the case, and shall, at its discretion, be empowered to order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, or any part thereof; and such order shall be made in the form or to the effect of the schedule marked (C.) to this act annexed, (see p.409.) and shall be signed by the clerk of the peace, which said order shall be a discharge to such sheriff, bailiff, or officer on the passing of his accounts at the exchequer, or before any auditor or other proper officer duly authorized to pass the same; and in all cases where the party shall have been lodged in the common gaol by such sheriff, bailiff, or other officer, the justices of the peace so assembled are hereby empowered either to remand such party to the custody of the sheriff, bailiff, or other officer, or upon the release of such party from the whole of such forfeited recognizance, to order such party to be discharged from custody, and such order shall be a full and sufficient discharge to the said sheriff, bailiff, or officer on the passing of his accounts at the exchequer, or before any auditor or other proper officer duly authorized to pass the same; and it shall and may be lawful to and for the said court of general or quarter sessions to award such costs, charges, and expenses to be paid by either party to the other, as to the said court shall seem just and reasonable.

C.

Proceedings not liable to stamp duty.

§ 9. None of the proceedings under this act shall be liable to any stamp duty.

§ 10. Enacts, that the clerk of the peace and other officers shall be entitled to their usual and legal fees on the discharge of any forfeited recognizance, and the said clerk of the peace to an allowance of 6*d*. for every one hundred words, for all copies of the roll sent to the said lords commissioners of the treasury: and in case any such sheriff, bailiff, officer, or clerk of the peace shall refuse or neglect to do and perform any duty, act, or thing imposed or required upon or from such sheriff or clerk, bailiff or officer, in manner by this act directed, then and in every such case, such sheriff, bailiff or officer, or clerk so refusing or neglecting, shall forfeit the sum of 50*l*., to be recovered by any person or persons who will sue for the same, together with full costs of suit, by action of debt or on the case, in any of H. M.'s courts of record at *Westminster*, wherein no essoign, protection, wager of law, or any more than one imparlance shall be allowed.

3 G.4. c.46. Allowance to sheriff and clerk of the peace on sums levied.

Penalty on sheriff, &c. for neglect, 50*l*.

§ 11. Nothing in this act contained shall extend or be construed to extend so as to prevent or interfere with the appropriation of any such fines, issues, amerciaments, forfeited recognizances, sum or sums of money, when so paid or accounted for into the said court of exchequer by any such sheriff, bailiff, or officer, but the same shall and may be applied, disposed of, and appropriated in such and the like manner as such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid in lieu or satisfaction of them or any of them, paid into the exchequer, were applied, disposed of, and appropriated before the passing of this act.

Not to alter the usual mode of appropriating fines.

§ 12. It shall be lawful for the lords commissioners of H. M.'s treasury to make such compensation as they may think fit, for the loss of any legal fees occasioned to the officers thereof, or to the officers of the court of the duchy of *Lancaster*, by this act.

Compensations to officers.

§ 13. Nothing in this act contained shall extend or be in anyways prejudicial to the rights, liberties, or privileges of the King, n right of his duchy or county palatine of *Lancaster*.

Act not to prejudice the rights, &c. of his majesty in the duchy of Lancaster.

§ 14. Provides and enacts, that all and every the clerk and clerks of the peace, and all town clerks, within that part of the U. K. called *England*, do and shall, on or before the second *Monday* after the morrow of *All Souls* yearly in every year, make and deliver into the court of exchequer a true and perfect duplicate on certificate of all such fines, issues, amerciaments, forfeited recognizances, and sum and sums of money, and other forfeitures whatsoever paid in lieu or satisfaction of them or any of them, as shall be contained in the several rolls or copies which shall be so sent out to the sheriff for the purpose of levying as aforesaid, and which shall have been set, lost, imposed, or forfeited in any of the said sessions of the peace which shall be held before *Michaelmas* in each year, to the intent that the sheriffs, on their apposals in the said court of exchequer, may be charged in their accounts with the monies levied and received by him or them respectively upon such writs or otherwise, and that all parties entitled to any such fines, recognizances or other forfeitures, or any portion or portions thereof, may be at liberty to claim the same before the foreign apposer of the said court of exchequer, according to the ancient course and practice of the said court.

Clerks of the peace, &c. to deliver unto the court of exchequer yearly a certificate of all fines, &c. paid, that the sheriffs may be charged in their accounts, and that parties entitled to fines, &c. may claim the same.

§ 15. Nothing in this act contained shall in any sort extend

Saving rights of

3 G.4. c.46.

bodies corporate, &c.

or be construed to extend to the prejudicing the rights and privileges of any bodies politic or corporate, or their successors, or of any lord or lords of any manor, liberty, or franchise whatsoever.

Saving the privileges of the city of London.

§ 16. Nothing in this act contained shall extend to or be in any ways prejudicial to the rights, customs, privileges, liberties, charter or charters of the city of *London*; but that the said city may enjoy the same accordingly, as they formerly have enjoyed the same, &c.

Schedule (A.)

George the fourth, by the grace of God, of the United Kingdom of *Great Britain* and *Ireland*, King, Defender of the Faith;

To the Sheriff, or Bailiff, or Officer [*as the case may be*] for the County of ———, [*or*, city, borough, *or* place, *as the case may be*] greeting.

YOU are hereby required and commanded, as you regard yourself and all yours, that you omit not by reason of any liberty in your county, city, [*borough*, or, *place*, as the case may be,] *but that you enter the same, and of all the goods and chattels, lands and tenements of all and singular the persons in the several extracts of this writ annexed, you cause to be levied all and singular the debts and sums of money upon them in the same extracts severally imposed and charged, so that the money may be ready for payment at the next general or quarter sessions of the peace, to be paid over in such manner as any two or more of the lords commissioners of his majesty's treasury may direct; and if any of the said several debts cannot be levied by reason of no goods or chattels being to be found belonging to the parties, then in all cases that you take the bodies of the parties refusing to pay the aforesaid debts, and lodge them in the gaol* [*of the county, city,* &c.], *there to await the decision of the justices assembled at the next general or quarter sessions, unless the parties shall have given sufficient security for their appearance at such sessions, for which you will be held answerable, and have you there then this writ. Witness* ———, *keeper of the rolls of the county, at* ——— *in the county of* ———, *the* ——— *day of* ———, *in the* ——— *year of our reign.*

———,
Clerk of the Peace.

Schedule (B.)

County of ———, to wit. } *TAKE notice, that you* ———, *of* ———, *are bound in the sum of* ——— *pounds, and your sureties* ———, *in the sums of* ——— *pounds each, to appear at the quarter or general sessions of the peace for the county of* ———, *to be holden at* ———, *on the* ——— *day of* ——— *next, and unless you personally make your appearance accordingly, the recognizances entered into by yourself and securities will be forthwith levied on you and your bail. Dated this*

——— *day of* ———, *one thousand eight hundred and twenty* ———.

———,
Justice of the Peace.

Schedule (C.)

To the Sheriff, Bailiff, or Officer, [*as the case may be*] of the county, [city, borough, *or* place, *as the case may be*] of ———.

WHEREAS ——— *hath appeared before the justices assembled at the general or quarter sessions* [as the case may be] *held at the* ——— *on the* ——— *day of* ———, *has forfeited the sum of* ———, [here describe the nature of the fine or forfeiture,] ——— *and having made it appear to the satisfaction of the justices so assembled, that he should be relieved from the payment of the said sum of* ———, [or if the penalty is mitigated, state from what part thereof] *You are therefore hereby required to discharge the said sum of* ———, *from the estreat roll delivered to you after the quarter sessions held at* ———, *for which discharge this warrant shall be your authority, and shall exonerate you from the said charge on the final passing of your accounts at the exchequer, or before any other officer duly authorized to pass such account.*

By order of the Court.

By stat. 4 *G.*4. *c.* 37. § 1. After reciting stat. 3 *G.*4. *c.*46. it is enacted, that it shall be lawful for the justices assembled at any general or quarter sessions of the peace, and they are hereby authorized and required, at the following or any subsequent general or quarter sessions held after the return of the writ and roll issued from any preceding general or quarter sessions, at the opening of the court, to insert or cause to be inserted in any following roll, all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, which have not been duly levied or recovered or properly accounted for by the sheriff, bailiff, or other officer, or have not been discharged on appeal before the general or quarter sessions, or by sign manual, warrant or authority of any three or more of the commissioners of H. M.'s treasury of the U. K. of *G. B.* and *Ireland*, and so to continue such process from sessions to sessions, till it shall be duly ascertained, to the satisfaction of the said commissioners of H. M.'s treasury, that the party in default has not any goods or chattels, lands, or tenements, in the county, division, riding, city, town, or place, on which a levy can be made, nor in any other county, division, riding, city, town, or place in *G. B.*, and that he is not to be found, or that his body cannot be lodged in any of H. M.'s gaols: provided always, that the said sheriff, bailiff, or other officer to whom the writ of *distringas* and *capias* or *fieri facias*, or other writ deemed necessary by the justices at any such general or quarter sessions to meet the exigency of the case, shall be sent by order of the said court, shall keep and detain in his possession the writ or writs so directed to him, and

4 G.4. c.37. Justices in sessions may insert in following rolls all such fines, &c. as have not been levied or accounted for by the sheriff, &c. or that have not been discharged.

Sheriff to detain the original writs in his possession, which shall continue in force, and be authority to act upon.

4 G.4. c.37.

the roll or rolls attached to such writ or writs, delivering to the said court of general or quarter sessions a copy of such roll or rolls, on the first day of the sitting of the said court, and also a copy of any former roll or rolls, where the fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, shall not have been delivered; and such original writ and roll, or writs and rolls, shall continue in force and effect, and shall be sufficient authority, without any further writ or roll; and such sheriff, bailiff, or other officer is hereby authorized and required, on quitting his office, to deliver over to his successor all rolls and writs in his possession, particularizing any fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, in order that the sheriff, bailiff, or other officer coming into office may use every means in his power for recovering the sums so unpaid, and not charged to his predecessor on the passing of his accounts at the exchequer, or before any auditor or auditors, or other person duly authorized to pass the same, the officer or officers entrusted with the execution of the process in any county, division, riding, city, town, or place, being first duly and diligently examined on oath by the court, at the delivery of the roll, on the first day of each general or quarter sessions, and in case such examination should not then take place, then on the subsequent day; and every such examination shall be duly recorded by the clerk of the peace or town clerk or other proper officer, in order that such sheriff, bailiff, or other officer may be chargeable with all sums not satisfactorily accounted for on the final passing of his accounts.

Sheriff on quitting office to deliver over to his successor all rolls and writs, particularizing fines, &c. that means may be used for recovery.

By § 2. § 7. and 8. of stat. 3 *G.* 4. *c.* 46. are repealed.

Where party subject to fines, &c. resides in another county, or has removed, the sheriff may issue his warrant to the sheriff acting for the place where the defaulter resides or where his goods are found, requiring him to execute the writ.

§ 3. In all cases where the party incurring or subject to any fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, shall reside or shall have fled or removed from or out of the jurisdiction of the sheriff, bailiff, or other officer, in which any such fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them, or any of them, shall have been incurred, imposed, or forfeited, or become due, it shall be lawful for such sheriff, bailiff, or other officer, and he is hereby authorised and required to issue his warrant, together with a copy of the writ, directed to the sheriff, bailiff, or other officer acting for the county, riding, city, borough, or place in which such person shall then reside or be, or in which any goods or chattels or other property shall be found, requiring such sheriff, bailiff, or other officer to execute such writ, and every such last-mentioned sheriff, bailiff, or other officer, is hereby authorized and required to act in all respects under such warrant, in the same manner as if the original writ had been delivered to him by order of the court of the general or quarter sessions of the county, riding, city, borough, or place for which such sheriff, bailiff, or other officer shall act; and the said sheriff, bailiff, or other officer is hereby required, within thirty days after the receipt of such warrant, to return to the sheriff, bailiff, or other officer, from whom he shall have received the same, what he shall have done in the execution of such process, and whether the party shall have given good and sufficient security to appeal at the ensuing general

or quarter sessions to be held for the county, riding, city, borough, or place from which the writ issued, and in case a levy shall have been made, to pay over all monies received in pursuance of the warrant to the sheriff, bailiff, or other officer from whom he shall have received the same. 4 G.4. c.37.

§ 4. Every sheriff, bailiff, or other officer acting for any county, division, riding, city, borough, or place, shall and he is hereby required to make up or cause to be made up annually, and immediately after the expiration of the year for which he shall act, or after the usual period for making up his account, in case he shall act under any grant, appointment, or other authority for a longer period than one year, an account in writing, containing the names and residences of all persons incurring fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, which he has been authorized or required to levy by virtue of any writ or writs issued to him, or to any predecessor in office; and in case any fine, issue, amerciament, forfeited recognizance, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, shall not have been levied or paid, the causes of non-payment shall be fully and particularly stated; and such account such sheriff, bailiff, or other officer is hereby required to transmit, within thirty days from the expiration of the year for which such account ought to be made up, to the commissioners of H. M.'s treasury, or at or within such other period as such sheriff, bailiff, or other officer shall be required by the said commissioners of H. M.'s treasury, or any three or more of them, in order that such account may be duly examined, checked, and inspected, under the direction of the said commissioners of H. M.'s treasury, or any three or more of them; and when so examined and approved, such account shall be transmitted to the proper officer in the court of exchequer, or to the auditor or other officer duly authorized to pass such account.

Sheriff, &c. to render an account yearly of all persons incurring fines, &c.

Causes of non-payment to be stated.

Account to be transmitted to the treasury.

§ 5. Every clerk of the peace, and town clerk, or other proper officer, is hereby required, within twenty days from the opening of the court of general or quarter sessions, to send to the commissioners of H. M.'s treasury a copy or an extract of the roll or rolls delivered by the sheriff, bailiff, or other officer, on the first day of the opening of such court of general or quarter sessions, in such form as shall be required by the said commissioners of H. M.'s treasury, also the causes of discharge in case any person shall have been relieved on appeal to the said court of general or quarter sessions, and the answer given by any sheriff, bailiff, or other officer to such court, where any fine, issue, amerciament, forfeited recognizance, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, has not been received by such sheriff, bailiff, or other officer duly authorized to receive the same.

Clerks of the peace, &c. to send to the treasury, within 20 days from the opening of the quarter sessions, copy of the rolls delivered by the sheriff.

Fire. See Burning, and Black Act, Vol. I.

Fire Arms *(Manufacturing.)*

[Stats. 53 G. 3. c. 115. — 55 G. 3. c. 59.]

53 G. 3. c. 115. By stat. 53 *G.* 3. *c.* 115. After reciting, that whereas serious injuries are frequently sustained by persons using guns, fowling-pieces, blunderbusses, pistols, and other fire arms, from the bursting thereof, in consequence of the barrels of such guns, fowling-pieces, blunderbusses, pistols, and fire arms not having been sufficiently proved; and that it is therefore expedient that the manufacturers of fire arms should be compelled to prove the same at some place appropriated for that purpose as a public proof-house: and whereas great quantities of fire arms and barrels for fire arms are manufactured in the town of *Birmingham* and the vicinity thereof, and it would tend to the safety and security of the public if a proof-house for fire arms, under proper superintendence and inspection, were to be established in or near the said town; it is enacted, that no barrel shall be used in the making or manufacturing of any gun, fowling piece, blunderbuss, pistol, or other description of fire arms usually called small arms, unless the same shall have been duly proved at the proof-house of the gun-makers' company in *London*, or at the proof-house to be established under the provisions of this act, or some proof-house belonging to H. M., or other proof-house established as a public proof-house by law; and which public proof-houses H. M. is hereby authorized and empowered to establish in such places, and under such regulations as to the care and management thereof, as H. M. shall think fit.

Barrels of fire arms not to be used, unless the same are duly proved.

Penalty on persons using or selling barrels not duly proved.

§ 2. Every person who shall use, or cause or procure to be used any barrel in the making, manufacturing, or finishing of any gun, fowling-piece, blunderbuss, pistol, or any other description of fire-arms as aforesaid, or who shall sell or cause to be sold any barrel for the making of any gun, fowling-piece, blunderbuss, pistol, or other description of fire-arms, which shall not first have been duly proved, and marked as proved at the gun-makers company's proof-house in *London*, or at the proof-house to be established under the provisions of this act, or some proof-house belonging to H. M. or other public proof-house established as such by law, or by H. M., shall forfeit and pay for every such offence any sum not exceeding 20*l.* to be recovered as hereinafter mentioned.

§ 3. Nothing in this act contained shall extend to *Scotland* or *Ireland*, to arms for H. M.'s forces, or the *East India* Company.

§ 4, 5, 6. Relate to the establishing a gun barrel proof-house and corporation in the town of *Birmingham*.

§ 7. All barrels brought to the said proof-house shall be proved with powder of equal quality as that used by the board of ordnance, and according to a certain scale specified; when so proved, such barrels to be marked as described.

§ 8. Relate to the appointment of a prover at *Birmingham*.

§ 10, 11. Relate to the appointment of a treasurer, and the application of sums received for proving.

55 G. 3. c. 59. But by stat. 55 *G.* 3. *c.* 59. It is enacted, § 1. " That every person who shall use or begin to use, or cause or procure to be used,

Penalty for

or to be begun to be used, either by ribbing, break-off fitting, rough-stocking, or other process, in any progressive state of manufacture in the making, manufacturing, or finishing of any gun, fowling-piece, blunderbuss, pistol, or other description of fire arms, usually called small arms, any barrel which shall not have been duly proved and marked as proved at the proof-house of the company of gun-makers of the city of *London*, or at the proof-house established under the provisions of the said recited act, (so long as such respective proof-houses shall be maintained for proving and marking the barrels of fire arms) or some proof-house belonging to H. M., or other proof-house to be established as a public proof-house, (and which public proof-house H. M. is hereby authorized and empowered to establish under such regulations, as to the care and management thereof, as H. M. shall think fit), shall respectively forfeit for each and every barrel so used or begun to be used, or caused or procured to be used, or to be begun to be used, any sum not exceeding 20*l.*, to be recovered and applied as hereinafter mentioned."

55 G.3. c.59.

using in any of the progressive stages of manufacture of fire arms, barrels not duly proved.

§ 2. "Every barrel for the making of, or proper or applicable for the making of any gun, fowling-piece, blunderbuss, pistol, or any other description of fire arms, usually called small arms, shall be sent immediately from the manufacturers themselves to the proof-house of the company of gun-makers of the city of *London*, or to the proof-house established under the provisions of the said recited act, (so long as such respective proof-houses shall be maintained for the proving and marking the barrels of fire arms), or some other proof-house established by law, before the same shall be delivered, or caused or procured or permitted to be delivered or sent for sale, or under pretence of sale, or be removed, consigned, or transmitted, or caused or procured to be removed, consigned, or transmitted for sale, or under pretence of sale, to any person whatsoever; and from and after the passing of this act, every person who shall deliver or send, or cause or procure to be delivered or sent for sale, or under pretence of sale, or who shall remove, consign, or transmit, or cause or procure to be removed, consigned, or transmitted for sale, or under pretence of sale, any barrel for the making of, or proper or applicable for the making of any gun, fowling-piece, blunderbuss, pistol, or any other description of fire arms usually called small arms, from the place where the same shall have been manufactured, which shall not have been first duly sent to the proof-house of the said company of gun-makers of the city of *London*, or the said proof-house at *Birmingham*, or some other proof-house established by law, to be proved and marked under the provisions of the said recited act, shall forfeit for each and every barrel so sent, or caused or procured to be sent for sale, or under pretence of sale, or removed, consigned, or transmitted, or caused or procured to be removed, consigned, or transmitted for sale, or under pretence of sale, any sum not exceeding 20*l.*, to be recovered and applied as hereinafter mentioned."

Barrels of fire arms to be sent direct from manufacturers to proof-houses.

Penalty on delivering except through a proof-house.

§ 3. "Every person who shall take or receive, or cause or procure to be taken or received, or permit or suffer to be received on his behalf any barrel, for the purpose of making or manufacturing, or proper or applicable for the making or manufacturing of any gun, fowling-piece, blunderbuss, pistol, or other description of fire

Penalty on persons receiving barrels of fire arms for the purpose of making guns, &c.

55 G.3. c.59.

which shall not have passed the proof-house and been proved.

arms usually called small arms, directly or indirectly from the manufacturer thereof, or from any other person on his behalf, except from or through some one or other of such proof-houses as aforesaid, or unless the same shall have been first duly proved and marked as proved at the proof-house of the company of gun-makers of the city of *London*, or the proof-house established under the provisions of the said recited act (so long as such respective proof-houses shall be maintained for proving and marking the barrels of fire arms) or some other proof-house belonging to H. M., or other public proof-house established as a public proof-house by law, shall forfeit for each and every barrel so received, or caused or procured to be received for the purpose, or proper or applicable for the purpose aforesaid, any sum not exceeding 20*l.*, to be recovered and applied as hereinafter mentioned."

Person having charge of the company of gun-makers' proof-house of the city of London, to receive, prove, and mark barrels of guns, &c.

Penalty for not doing so, and for delivering barrels unproved and marked.

§ 4. "And whereas a proof-house has for a long time past been established and provided for proving the barrels of fire arms, in or near the city of *London*, under the management and controul of the company of gun-makers of the city of *London*, under and by virtue of a charter heretofore granted to the said company; it is therefore enacted, that all barrels for the making or proper or applicable for the making or manufacturing of guns, fowling-pieces, blunderbusses, pistols, and other description of fire arms usually called small arms, which shall hereafter be taken to the proof-house of the said company of gun-makers of the city of *London* for proof, shall be proved by their proof master for the time being, with powder of equal quality to the powder which is now used by the honourable board of ordnance, and according to, or not under the scale or table of proof mentioned and set forth in the said recited act; and the person having the charge, care, and management of the proof-house of the said company of gun-makers of the city of *London* shall receive all barrels sent, consigned, or transmitted to the said proof-house for proof, and prove the same, and cause all such barrels, after the same have been proved, and (if found to be proof) marked, to be delivered to the persons for whom such barrels are directed, upon payment of all such charges as shall have been incurred in respect of the carriage and delivery of such barrels at the proof-house, and of the said company's charges for proving the same, and of the keeping of the same for proof, and delivery thereof to the person for whom the same are intended or shall be directed to be delivered to after proof; and in case any barrel so sent to the said proof-house to be proved shall not be received and proved thereat according to law, or shall be delivered or parted with, or permitted to be delivered or parted with, or to be taken away, which shall not have been so proved, and (if found to be proof) marked with the marks and according to the regulations of the said company of gun-makers of the city of *London* for the time being, then and in every such case, the person so having the charge, care, and management of such proof-house for the time being, shall forfeit for each and every barrel which shall not be received and proved in manner before-mentioned, and for each and every barrel which shall be so delivered or parted with, or permitted to be delivered or parted with or taken away, which shall not have been so proved, and (if found to be proof) marked as proved as aforesaid, the sum

of ten shillings, to be recovered and applied as hereinafter mentioned."

55 G.3. c.59.

Not to extend to Scotland, or Ireland, or to arms made for H. M., or the East India company, or certain barrels specified.

§ 5. "Nothing in this act contained shall extend to *Scotland* or *Ireland* (except as to the forging marks, as in this act after mentioned) or to arms for the use of H. M.'s forces, or for the *East India* company, or to any barrels in the forged ground, finished or in any other state of manufacture, which shall be made or consist of stub or twisted stub, iron or other barrels usually termed best barrels; (which said last-mentioned barrels may be sent, brought or received for the purposes aforesaid, in any number not exceeding twenty, without being subject to any penalty, except that such barrels shall be liable to the penalty for using barrels not duly proved and marked); and nothing in this act contained is to exempt such last-mentioned barrels from being proved and marked as required by the said recited act and this act."

Penalty for forging proof marks, or selling, &c. barrels with forged marks.

§ 6. "Every person who shall, in any part of the U. K., forge or counterfeit, or cause or procure to be forged or counterfeited, or assist or join in forging or counterfeiting, any mark or stamp used or which may be used at any proof-house for proving and marking barrels in pursuance of the said recited act, or shall wilfully or knowingly sell or offer for sale, or use in the making or manufacturing of any gun, fowling-piece, blunderbuss, pistol, or other description of fire arms as aforesaid, any barrel finished, welded or forged, or in any other progressive state of manufacture, whereon shall be any mark or stamp which shall be forged or counterfeited in imitation of or to resemble any mark or stamp so used or to be used at any such proof-house, shall respectively forfeit and pay for each and every such barrel whereon any such forged or counterfeit mark shall be, any sum not exceeding 20*l*., to be recovered and applied as hereinafter mentioned."

Penalty for putting proof-marks on barrels not proved.

§ 7. "If any proof master or assistant proof master appointed or to be appointed under the said recited act, or any other person shall, in any part of the U. K. put, place, or strike, or cause or procure to be put, placed or struck, or shall willingly act or assist in the putting, placing or striking any mark or stamp used or which may be used at any proof-house for proving and marking barrels in pursuance of the said recited act or this act, upon any barrel finished, welded or forged, or in any other progressive state of manufacture for the making of, or proper or applicable for the making of any gun, fowling-piece, blunderbuss, pistol or other description of fire arms usually called small arms, which shall not have been duly proved at the proof-house established and maintained under the provisions of the said recited act (so long as such proof-house shall be maintained for proving and marking the barrels of fire-arms), every person so offending shall forfeit for each and every barrel on which he shall put, place or strike, or cause or procure to be put, placed or struck, or shall willingly act or assist in the putting, placing or striking any such mark or stamp as aforesaid, any sum not exceeding 20*l*., to be recovered and applied as hereinafter mentioned."

§ 8. Repeals the regulation in stat. 53 *G*.3. *c*.115. respecting the price of proving barrels.

Fixing the prices for proving barrels.

And by § 9. It shall be lawful for the said company to fix and regulate from time to time the sums to be paid for such proofs, so as that no higher sum shall in any case be demanded, taken or

55 G.3. c.59. received for any barrel which shall be proved at such proof-house, and marked as proved under the said recited act or this act, than is hereinafter set forth; viz.

1st, For any common birding, Spanish, Dutch, Carolina musket, carbine, or other barrel, not being made of twisted or stub iron, nor above the calibre of six eighths and an half, any sum not exceeding sixpence for each and every barrel:

2d, For every pair of plain iron or brass holster or saddle pistol barrels, any sum not exceeding sixpence for each pair:

3d, For every barrel made of twisted or stub iron, any sum not exceeding nine-pence for each and every barrel; and for every pair of stub or twisted pistol barrels, any sum not exceeding nine-pence for each pair: And

4th, For any barrel above the calibre of six eighths and a half, any sum not exceeding one shilling for each and every barrel; any thing in the said recited act contained to the contrary in anywise nothwithstanding.

Offences and penalties, how to be heard, levied, &c.

§ 10. Any offence against this act may be heard and determined in a summary way before any two of H. M.'s justices of the peace for the county, riding, division, city, town, liberty, or place where any such offence or offences shall be committed; and the conviction may be had upon the oath of one witness; and the amount of the forfeiture or penalty for every such offence shall be fixed and determined by such justices, not exceeding the sums hereinbefore mentioned; and one half shall be paid and payable to the informer, and the other half to the overseers of the poor of the parish or place where such offence shall be committed; and such justices may direct to be paid by any party such costs as they shall judge reasonable; and in case any such forfeiture, or penalty and costs shall not be forthwith paid pursuant to such conviction, and the person so convicted shall not signify his intention to appeal against such conviction, and forthwith enter into recognizance before such justices, himself in the penalty of a sum equal to double the amount of the penalty fixed, with two sufficient sureties, in the penalty of a sum equal to the amount of the penalty fixed, with condition personally to appear and prosecute such appeal at the next general quarter or general sessions of the peace to be holden for the county, &c. where such offence shall have been charged to have been committed, such justices shall, by warrant under their hands, cause the same penalties aud costs to be levied by distress and sale of the offender's goods and chattels, together with the costs and charges attending such distress and sale; and in case no sufficient distress can be had, such justices shall, by warrant under their hands, commit the offender to the common gaol or house of correction within their jurisdiction, there to remain without bail or mainprize for any time not exceeding six calendar months.

Limitation of prosecutions.

§ 11. The said companies of gun-makers, their officers, servants or agents, shall not be liable to any prosecution or information by virtue of this or the said recited act, unless such prosecution shall be commenced or information given within six calendar months after the offence committed.

Prescribing form of conviction.

§ 12. Convictions to be drawn up on parchment or paper, in the form or to the effect following; that is to say,

—— } to wit. } *BE it remembered, that on the* —— *day of* —— *in the year of our Lord* ——, —— *of* ——, *in the county of* ——, *labourer, is convicted before us* [naming the justices] —— *of his majesty's justices of the peace for the county of* —— [or, *riding, city, liberty, division, town or place*] *for that the said* —— [here state the offence] *contrary to the statute made in the fifty-third year of the reign of king* George *the third, intituled* An act to insure the proper and careful manufacturing of fire-arms in *England*, and for making provision for proving the barrels of such fire-arms, *and contrary to the provisions of an act passed in the fifty-fifth year of the same reign, intituled* An act [here set forth the title of this act] (*a*): *and we the said justices do hereby adjudge and determine the said* —— *for the said offence to forfeit and pay the sum of* —— *of lawful money of* Great Britain; *and do order one* —— *thereof to be forthwith paid by him the said* —— *to* —— [the informer] *and the other* —— *thereof to the overseers of the poor of the parish of* [where the offence was committed]: *and we the said justices do also award and direct the said* —— *forthwith to pay to* —— *the sum of* —— *for costs. Given under our hands the day and year above written.* 55 G.3. c.59.

And every such conviction shall be transmitted to the next general sessions or general quarter sessions of the peace to be holden for the county, &c. wherein such conviction was had, to be filed and kept amongst the records.

Allowing an appeal from convictions of justices.

§ 13. If any person convicted of any offence punishable by this act, shall think himself aggrieved by the judgment of the justices, such person shall be at liberty to appeal from every such conviction to the next court of general sessions, or general quarter sessions of the peace which shall be held for the county, &c. wherein such offence was committed; and the justices in or at the said next court of general sessions or general quarter sessions are hereby authorized and required to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid to either party; which decision shall be final; and if upon hearing the said appeal, the judgment of the justices before whom the appellant shall have been convicted shall be confirmed, such appellant shall forthwith pay the forfeitures or penalty mentioned in such conviction, and the costs awarded to be paid by such appellant; and in default of payment thereof, such appellant shall immediately be committed by the said court to the common gaol or house of correction of the county, riding, division, city, town, liberty, or place where any such offence may have been committed, there to remain for any time not exceeding six calendar months, unless such penalty and costs shall be sooner paid.

Allowing an appeal from acts of trustees, &c.

§ 14. If any person shall feel himself aggrieved by any of the acts, orders or proceedings of the said trustees, guardians and wardens, or either of them, in pursuance of this act, such person

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(*a*) "An act for amending an act of his present majesty, to insure the proper and careful manufacturing of fire-arms in *England*, and for making provision for proving the barrels of such fire-arms."

55 G.3. c.59. may appeal to the justices of the peace at the next general quarter sessions of the peace to be holden for the said county of *Warwick*, such appellant (if there be sufficient time after the cause of such complaint shall have arisen) first giving eight days' notice at least, in writing, of his intention of bringing such appeal, and of the matter thereof, to the clerk or treasurer of the said trustees, and within four days after such notice (if required) entering into recognizance before some justice of the peace for the said county, with two sufficient sureties conditioned to try such appeal, and abide the order thereon, and to pay such costs as shall be awarded by the justices at such quarter sessions; and for want of sufficient time for giving such notice previous to the first quarter sessions after the cause of such complaint shall have happened, then such appeal, after such notice and under such recognizance, may be made at the second general quarter sessions of the peace to be holden for the said county; and the justices at such first or second sessions shall hear and finally determine the cause and matter of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such quarter sessions shall be final and conclusive; and the said justices at such sessions may also by their order or warrant, levy such costs so awarded, by distress and sale of the goods and chattels of the person or persons who shall neglect to pay the same, and for want of sufficient distress, commit such person to the common gaol or house of correction for the said county, for any time not exceeding three calendar months, or until payment of such costs.

Limitation of actions.

§ 15. No action or suit shall be commenced against any person for any thing done in pursuance of this act, and the said recited act, until after thirty days' notice in writing shall be thereof given to the guardians, trustees, and wardens of the gun-barrel proof-house of the town of *Birmingham*, nominated and appointed by, or to be elected by virtue of the said recited act, or their solicitor, or to the master or warden of the company of gun-makers of the city of *London*, or after sufficient satisfaction tendered, or after six calendar months after the fact committed, for which such action or suit shall be so brought: and all such actions or suits shall be laid and tried in the county, city, or place where the cause of action shall arise; and the defendant in such action or suit may plead the general issue, and give this act and the said recited act and the special matter in evidence at any trial which shall be had thereupon, and that the matter or thing for which such action or suit shall be brought, was done by the authority of this act and the said recited act; and if the said matter or thing shall appear to have been so done, or if it shall appear that such action or suit was brought before thirty days' notice was given, or that sufficient satisfaction was tendered or paid into court, or if any such action or suit shall not be commenced within the time before for that purpose limited, or shall be laid in any other county, city, or place than as aforesaid, the jury shall find for the defendant; and if a verdict shall be found for such defendant, or if the plaintiff shall become nonsuited, or suffer a discontinuance of such action or suit, or if upon a demurrer in such action or suit, judgment shall be given for the defendant, such defendant shall have treble costs, and such remedies for recovering the same, as any defendant may have for the recovery of his costs in other cases.

§ 16. The accounts of the said proof-house (*a*), and of all sums of money to be paid, laid out, and expended, and of all sums to be received, shall once in each year be audited by some justice of the peace acting at *Birmingham*, or within seven miles thereof. 55 G. 3. c. 59. Proof-house accounts to be audited.

By § 17. So much and such parts of the said recited act as enacts that the lord lieutenants of the respective counties of *Warwick*, *Worcester*, and *Stafford*, and the persons serving in parliament for the said counties respectively, and other persons named, and their successors, to be chosen in manner therein directed, should be a body corporate, and called "The guardians, trustees, and wardens of the gun-barrel proof-house of the town of *Birmingham*," for the purpose of proving, in the manner directed by the said act, all barrels for guns, fowling-pieces, blunderbusses, pistols, and every other description of fire-arms which should be brought to the proof-house at *Birmingham* to be proved, is hereby repealed; and from and after the passing of this act, the lord lieutenants of the respective counties of *Warwick*, *Worcester*, and *Stafford*, and the persons serving in parliament for the said counties respectively for the time being, and certain other persons whose names are specified, with the high and low bailiff for the town of *Birmingham* for the time being, and all acting magistrates residing within seven miles of the town of *Birmingham*, and their successors, to be chosen in manner directed by the said recited act, shall be and they are hereby declared to be a body politic and corporate, and shall be called or known by the name of "The guardians, trustees, and wardens of the gun-barrel proof-house of the town of *Birmingham*," for the purpose of proving or causing to be proved, in the manner directed by the said recited act, all barrels for guns, fowling-pieces, blunderbusses, pistols, and every other description of fire-arms which shall be brought to the proof-house at *Birmingham* to be proved according to the provisions of the said recited act. Appointing number of the company.

§ 18. This act shall be deemed a public act. Public act.

As to seizure of fire arms, see Vol. V. *tit.* Riot. Seizing fire arms.

Fireworks.

BY stat. 9 & 10 *W.* 3. *c.* 7. § 1. It shall not be lawful for any person (of what age, sex, degree, or quality soever) to make or cause to be made, or to sell or expose to sale any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for making the same; or to permit the same to be cast, thrown, or fired from out of or in his house, lodging, or habitation, or other place thereto belonging, into any public street, highway, road, or passage; or to throw, cast, or fire, or be aiding in throwing, casting, or firing the same in or into any public street, house, shop, river, highway, road, or passage; and every such offence shall be adjudged a common nuisance. 9 & 10 W. 3. c. 7. Fireworks a nuisance.

§ 2. If any person shall make or cause to be made, or give, sell, Making and

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(*a*) i. e. at *Birmingham*. Qu.

9&10 W.3. c.7.

selling rockets, &c.

or offer to sale any squibs, rockets, serpents, or other fire-works, or any cases, moulds, or other implements for making the same, he shall, on conviction before one justice, or chief magistrate, by confession or oath of two witnesses, forfeit 5*l.*, half to the poor, and half to the prosecutor, to be levied by distress, by warrant of such justice or chief magistrate.

Suffering rockets to be fired.

§ 2. And if any person shall permit any the same to be cast, thrown, or fired from, out of, or in his house, shop, dwelling, lodging, habitation, or other place thereto belonging, into any public street, highway, road, or passage, or any other house or place, he shall forfeit 20*s.* in like manner.

Firing rockets.

§ 3. If any person shall throw, cast, or fire, or be aiding in throwing, casting, or firing any the same into any public street, house, shop, river, highway, road, or passage, he shall forfeit 20*s.* in like manner; and if he shall not immediately on conviction pay to the justices the said forfeiture for the uses aforesaid, the latter shall commit him to the house of correction, to be kept to hard labour for any time not exceeding one month, unless he shall sooner pay the forfeiture.

Where a squib was wantonly thrown among the stands at a fair, and being removed from off that on which it alighted, it occasioned the loss of the eye of a byestander, it was holden by *De Grey* C. J., and *Nares* and *Gould* Js., against *Blackstone* J., that all that was done subsequent to the original throwing was a continuation of the first force, and first act, which continued till the squib was spent by bursting; and that trespass, not an action on the case, was the proper remedy. *Scott* v. *Shepherd*, 2 *Black. Rep.* 892.

In a like case at N. P. it was held by Lord *Ellenborough* C.J., that a schoolmaster who permits an infant pupil under his care to make use of fireworks, is responsible in an action for the mischief which ensues. *King* v. *Ford*, 1 *Stark. N. P. C.* 421.

3 G.4. c.126.

By stat. 3 *G.4. c.* 126. § 121. A penalty of 40*s.* is imposed for making or assisting in making bonfires, or wantonly letting off any squib, rocket, serpent, or other firework whatsoever, within 80 feet of the centre of any turnpike-road. See *post, tit.* Highways (*Turnpike*).

Information on stat. 9 & 10 *W.* 3. *c.* 7. § 2. for selling fire-works.

County of ——— to wit, } *Be it remembered, that on the —— day of —— in the year of our Lord ——, at ——, in the said county of ———,* A. I. *of ———, in the said county, gentleman, cometh before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, and giveth me, the said justice, to understand and be informed, that* A. O. *of the town and parish of ———, in the said county, toyman, at his shop in the said town and parish, on the ——— day of this instant month of ———, unlawfully and against the form of the statute, did sell to one* R. F., *certain squibs, serpents, rockets, and other fire-works, whereby the said* A. O. *by virtue of the said statute in that case made and provided, hath for his said offence forfeited the sum of five pounds; wherefore the said* A. I. *prayeth the judgment of me, the said justice, in the premises, and that he may have one moiety of the said forfeiture of five pounds.*

Exhibited, &c.

For casting and throwing squibs and other fire-works.

——— *That* A.O. *late of* ——— *in the said county, yeoman, on the* ——— *day of* ——— *now last past, at the town and parish of* ——— *in the said county, in the public street and highway there unlawfully did throw, cast, and fire certain fire-works, against the form of the statute in such case made and provided, whereby and by force of the said statute, the said* A.O. *for his said offence hath forfeited the sum of twenty shillings. Wherefore, &c.*

Fish and Fisheries.

THERE are some acts relating to this subject, of which, being of less general concern, it is thought sufficient to insert only the titles; *viz.*

(1) An act for the preservation of fish in the river of *Severn.* 30 C.2. c.9.

(2) An act for the increase and better preservation of salmon and other fish in the rivers within the counties of *Southampton* and *Wilts.* In which some alterations are made by the 1 G.1. *st.* 2. *c.*18. 4 Ann. c.21.

(3) An act for the better preservation and improvement of the fishery within the river of *Thames,* and for regulating and governing the company of fishermen of the said river. 9 Ann. c.26.

(4) An act for the more effectual preservation and improvement of the spawn and fry of fish in the river of *Thames* and waters of *Medway;* and for the better regulating the fishery thereof. 30 G.2. c.21.

(5) An act for the better preservation of fish, and regulating the fisheries in the rivers *Severn* and *Verniew.* 18 G.3. c.33.

What follows seems best reducible under these heads:

I. *The penalty of fishing in ponds and other private fisheries.*
[3 Ed. 1. c. 20. — 37 H. 8. c. 4. — 5 El. c. 21. — 22 & 23 C. 2. c. 25. — 4 & 5 W. c. 23. — 9 G. 1. c. 22. — 5 G. 3. c. 14. — 4 G. 4. c. 54.]

II. *Rules concerning the size and preserving the breed of fish.*
[13 Ed. 1. st. 1. c. 47. — 13 R. 2. st. 1. c. 19. — 17 R. 2. c. 9. — 2 H. 6. c. 15. — 1 Eliz. c. 17. — 1 G. st. 2. c. 18. — 33 G. 2. c. 27. — 43 G. 3. c. lxi. — 45 G. 3. c. xxxiii. — 58 G. 3. c. 43.]

III. *Of the herring and other fisheries.*
[28 G. 2. c. 14. — 26 G. 3. c. 81. — 27 G. 3. c. 10. — 48 G. 3. c. 110. — 50 G. 3. c. 108. — 55 G. 3. c. 94. — 1 & 2 G. 4. c. 79. — 5 G. 4. c. 64.]

IV. *Of the oyster fisheries.*
[31 G. 3. c. 51. — 48 G. 3. c. 144.]

V. *Rules concerning fishing in or near the sea.*
[3 J. 1. c. 12. — 1 G. 1. st. 2. c. 18. — 9 G. 1. c. 33. — 33 G. 2. c. 27. — 42 G. 3. c. 22.]

VI. *Importing fish.*
[18 C. 2. c. 2. — 1 G. 1. st. 2. c. 18. — 9 G. 2. c. 33.]

I. The Penalty of fishing in Ponds and other private Fisheries.

Erecting a fish-pond.

Any man may erect a fish pond without licence; because it is a matter of profit, and for the increase of victuals. 2 *Inst.* 199.

3 Ed. 1. c. 20. Trespassing in ponds.

By stat. 3 *Ed.* 1. *c.* 20. If any trespassers in ponds be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass, and they shall have three years imprisonment, and after shall make fine at the king's pleasure, (if they have whereof,) and then shall find good surety that after they shall not commit the like trespass; and if they have not whereof to make fine, after three years' imprisonment they shall find like surety; and if they cannot find like surety they shall abjure the realm. And if none sue within the year and day, the king shall have the suit.

Note; those are trespassers in ponds, who endeavour to take fish therein. 2 *Inst.* 200.

9 G. 1. c. 22. Cutting ponds, dams, and heads of conduits.

Stat. 9 *G.* 1. *c.* 22. commonly called the black act, (see *post*, p. 429. and Vol. I. *tit.* Black Act,) has in a great degree superseded 37 *H.* 8. *c.* 4. § 4. which latter statute rendered the party maliciously cutting heads or dams of ponds, &c. or other several waters, or heads or pipes of conduits, liable to treble damages in an action of trespass and a fine to the king of 10*l*.

5 El. c. 21. Breaking the dams of fishing ponds.

By stat. 5 *El. c.* 21. § 2. 6. If any person shall at any time by day or night unlawfully break, cut down, cut out, or destroy any head or dam of any ponds, pools, moats, stagnes, stews, or several pits wherein fish shall be, or shall wrongfully fish therein, with intent to destroy, kill, take, or steal any of the same fish against the will of the owners or possessioners of the same fish; he shall on conviction at the suit of the king, or of the party, at the assizes or sessions, be imprisoned three months, and pay treble damages to the party grieved; and after the three months expired shall find sureties for his good abearing for seven years, or remain in prison till he doth during the said seven years.

22 & 23 C. 2. c. 25. Persons stealing fish out of ponds, or waters, to make recompence to the owner thereof.

By stat. 22 & 23 *C.* 2. c. 25. § 7. After reciting, that whereas divers idle, disorderly, and mean persons betake themselves to the stealing, taking, and killing of fish out of ponds, pools, moats, stews, and other several waters and rivers, to the great damage of the owners thereof; it is enacted, that if any person shall use any net whatsoever, or any angle, hair, noose, troll, or spear; or shall lay any wears, pots, nets, fish hooks, or other engines; or shall take any fish by any means or device whatsoever, or be aiding thereunto, in any river, stew, pond, moat, or other water as aforesaid, *without the consent of the lord or owner of the water*, and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence; every such offender in stealing, taking, or killing fish shall, for every such offence, give to the party injured such recompence for his damages, and in such time as the justice shall appoint, not exceeding treble damages;

and moreover shall pay down to the overseers for the use of the poor such sum, not exceeding 10*s*., as the justice shall think meet: in default of payment, to be levied by distress and sale, rendering the overplus, if any; for want of distress, to be committed to the house of correction not exceeding one month, unless he enter into bond with one surety to the party injured, not exceeding 10*l*., never to offend in like manner. 22 & 23 C. 2. c. 25. — and also pay 10*s*.

Without the consent of the lord or owner of the water] *R.* v. *Mallinson*, 2 *Burr.* 679. • A conviction for *taking and killing fish*, not setting forth (amongst other particulars) that the defendant had not the licence or *consent of the owner*, was adjudged to be bad. For by the Court; the offence provided against by the act is *stealing* fish, taking it without the consent of the owner. The jurisdiction given to the justice is over every such offender in stealing, taking, and killing.

By stats. 22 & 23 *C.* 2. *c.* 25. § 9. Persons aggrieved may appeal to the next sessions, whose determination therein shall be final, if no title to any land, royalty, or fishery be therein concerned. Appeal.

§ 8. Every justice before whom such offender shall be convicted may take, cut, and destroy all such angles, spears, hairs, nooses, trolls, wears, pots, fish hooks, nets, or other engines, wherewith such offender shall be apprehended. Engines may be seized and destroyed.

By stats. 4 & 5 *W.* 3. *c.* 23. § 5. After reciting that whereas divers idle, disorderly, and mean persons have and keep nets, angles, leaps, piches, and other engines for the taking and killing of fish out of the ponds, waters, rivers, and other fisheries, to the damage of the owners thereof; it is therefore enacted, that no person shall have or keep any net, angle, leap, piche, or other engine for the taking of fish, other than the makers and sellers thereof, for their better conveniency in the sale of the same, and other than the owner and occupier of any river or fishery; [and (§ 6.) except fishermen and their apprentices lawfully authorized to fish in navigable rivers or waters:] and the owner or occupier of any river or fishery, and every other person by him for that purpose appointed, may seize, detain, and keep to his own use every net, angle, leap, piche, and other engine, which he shall find used or laid, or in the possession of any person or persons fishing in any river or fishery, without the consent of the owner or occupier thereof. And also any person authorized by a justice's warrant may in the day time search the houses, outhouses, or other places of any person hereby prohibited to have or keep the same, as shall be suspected to have or keep in his custody or possession any net, angle, leap, piche, or other engine aforesaid, and seize and keep the same to his own use, or cut in pieces or destroy the same, as things by this act prohibited to be kept by persons of their degree. 4 & 5 W. 3. c. 23. Persons not owners of fisheries, may not keep nets, &c. Fishermen, &c. lawfully authorized, excepted. Owner of fishery may seize nets, &c. used in his fishery, &c.

By stat. 5 *G.* 3. *c.* 14. § 1. If any person shall enter into any park or paddock fenced in or inclosed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling-house, in or through which park, &c. or garden, &c. any river or stream of water shall run or be; or wherein shall be any river, stream, pond, pool, moat, stew, or other water; and by any means or device whatsoever shall steal, (A. B. C.), take, kill, or destroy any fish bred, kept, or preserved in any such river, &c. without the consent of the owner: or shall be aiding or assisting therein as aforesaid; or shall receive or buy any such fish, knowing the same to be so 5 G. 3. c. 14. Entering any park inclosed, or garden, &c. to destroy fish, transportation. A. B. C.

5 G.3. c.14.

stolen or taken as aforesaid; and being thereof indicted within six calendar months next after such offence or offences shall have been committed, before any judge or justices of gaol delivery for the county wherein any such park or paddock, garden, orchard, or yard, shall be; and shall on such indictment be by verdict or confession convicted of such offence, &c. the person or persons so convicted shall be transported for 7 years.

Construction of the words "*bred, kept, or preserved.*"

"*Fish bred, kept, or preserved.*" *Rex* v. *Carradice and Cleasby.* Cor. *Wood* B., MS. C. C. R. 2 *Russ.* 1199. S. C. At *Westmorland* Sum. Ass. 1811. the prisoners were indicted before *Wood* B. for entring an inclosed park through which there ran a certain river, called the river Kent, and *feloniously* stealing, &c. certain fish there *bred, kept, or preserved* in the river, without the consent of the owner. The evidence was, that the park was inclosed by a high stone wall, except in those places where the stream of the river ran into it and out of it again, which places were fenced by a railing to prevent the deer from getting away. The river ran in its natural course through the park; and the fish might pass in and out of the park at either end as freely as along any other part of the river; there being nothing to keep them in the park. They were not particularly preserved; but as there was a common foot-path through the park on each side the river, the owner of it prohibited persons from angling in that part of the river without leave; and sometimes his servants watched it by night to prevent fishing. It did not appear that fish were ever bred or put into the part of the river within the park by the owner. Upon these facts it was objected, that fish were not so *bred, kept, or preserved* in the river in question, as to bring the case within this section of the statute. There were also two objections made to the form of the indictment; first, that the fact was alleged to have been done *feloniously*, whereas the offence was not declared to be a felony by the statute; and, secondly, that there was no statement of the *ways, means, or device* employed in order to take the fish. The prisoner having been found guilty, the objections were referred to the consideration of the twelve judges, a majority of whom decided, in favour of the principal objection, that the fish were not in this case *bred, kept, or preserved* within the meaning of the statute. All the judges however agreed that there was nothing in the two other objections.

§ 2. Enacts that in case an offender shall surrender himself to a justice of the peace of the county where the offence was committed, or being in custody shall voluntarily make confession, and a true discovery on oath of his accomplices, so as such accomplices may be apprehended, and shall give such evidence as shall convict them, he shall be pardoned of the offence so by him confessed.

Persons convicted of taking or destroying, &c. fish in rivers or other waters.

Forfeit to the owner of the fishery 5*l.*

§ 3. "In case any person or persons shall, after 1st *June* 1765, take, kill or destroy, or attempt to take, kill or destroy, any fish, in any river or stream, pond, pool, or other water, (not being in any park or paddock, or in any garden, orchard or yard, adjoining or belonging to any dwelling-house, but shall be in any other inclosed ground which shall be private property) every such person, being lawfully convicted thereof by the oath of one or more credible witness or witnesses, shall forfeit and pay for every such offence the sum of 5*l.* to the owner or owners of the fishery of such

river or stream of water, or of such pond, pool, moat, or other water: And it shall and may be lawful to and for any one or more of H. M.'s justices of the peace in the county, division, riding, or place where such last-mentioned offence or offences shall be committed, upon complaint made to him or them upon oath (D), against any person or persons, for any such last-mentioned offence or offences, to issue his or their warrant (E) or warrants to bring the person or persons so complained of before him or them; and if the person or persons so complained of shall be convicted of any of the said offences last mentioned, before such justice or justices, or any other of H. M.'s justices of the same county, division, riding or place aforesaid, by the oath or oaths of one or more credible witness or witnesses, which oath such justice or justices are hereby authorized to administer, or by his or their own confession; then and in such case the party so convicted shall, immediately after such conviction (F) pay the said penalty of 5*l.* hereby before imposed for the offence or offences aforesaid, to such justice or justices before whom he shall be so convicted, for the use of such person or persons as the same is hereby appointed to be forfeited and paid unto; and in default thereof, shall be committed by such justice or justices to the house of correction, for any time not exceeding six months, unless the money forfeited shall be sooner paid."

5 G.3. c.14.

On complaint of the offence, justice to issue his warrant for apprehending the offender; D. E.

F. and the penalty to be paid down upon conviction; otherwise the offender to be committed to the house of correction for six months.

§ 4. Or such owner of the fishery may bring an action for the penalty (within six calendar months after the offence), in any of the courts of record at *Westminster*.

§ 5. Provided that nothing in this act shall extend to subject any person to the penalties thereof, who shall fish, take, or kill and carry away any fish in any river or stream of water, pond, pool, or other water, wherein such person shall have a just right or claim to take, kill, or carry away any such fish.

Exception.

It has been holden, that it must appear upon a conviction under this third clause of the statute, that there was a complaint by the owner, and that the fishing was without the owner's consent. *R.* v. *Corden*, 4 *Burr.* 2279.

On conviction it must appear that such fishing in private property was without consent of the owner.

And in the following recent case it was expressly decided, that in a conviction on stat. 5 *G.* 3. *c.* 14. § 3. It must be distinctly stated in the information, and in the evidence, that the proceeding was at the instance of the owner of the fishery. *R.* v. *Daman*, *H.* 1819. 2 *B.* & *A.* 378. 1 *Chitt. Rep.* 147. S. C. The defendant had been convicted before three justices of the county of *Southampton*, under stat. 5 *G.* 3. *c.* 14. § 3. of destroying, with a net, fish in inclosed grounds, being private property. The conviction stated as follows, "Be it remembered, that on 31*st January* 1818, at &c. Sir *Henry Fane*, of *&c. at the instance and on the behalf of the Honourable* Anne Fane, *widow, lady of the manor of* Avon Tyrrell, in the said county, came in his proper person before us, and gave us to be informed, &c." It then proceeded to set out a regular information by Sir *H. Fane* against the defendant, for the offence, concluding thus; "whereupon the said Sir *H. Fane*, *on behalf of the said A. Fane*, lady of the manor, and owner of the fishery aforesaid, prayed judgment, and that the defendant might be brought before us, &c." The conviction then set out the defendant's appearance and plea, and the evidence. But it was not expressly stated, either upon the face of the information, or in the

5 G.3. c.14. R. v. Daman. evidence, that the proceedings originated with the Honourable *Anne Fane*, the owner of the fishery. The conviction having been removed into K. B. by certiorari, a rule nisi was obtained to quash it. After argument, in which *R. v. Corden*, 4 *Burr.* 2279. was cited as conclusive against the conviction.—Per *Bayley* J. (absente *Abbott* C. J.) In the case of a conviction, nothing can be supplied, either by intendment or argument; and therefore we must, on the present occasion, look only to the express words of the conviction, and of the act of parliament. The act was passed for the more effectual preservation of fish, and it directs that the offender shall forfeit for every offence 5*l.* to the owner of the fishery; and gives him a power of obtaining the penalty either by information or action. In the latter case the proceeding must be in his name; and in the former, therefore, it follows, by necessary intendment, that it must appear on the face of the proceedings, either that the penalty is sued for in his name, or at his instance. And it is not sufficient that this fact should be stated by the justice in the conviction, but it must be also embodied in the information, and established by the proof. In this case, the magistrates state in the conviction, that Sir *Henry Fane*, at the instance and on the behalf of the Honourable *Anne Fane*, lady of the manor, &c. appeared before them. Now it does not appear upon what authority that fact is stated, and there is nothing proceeding from the party which leads to that conclusion. Then, in the information it is stated, that Sir *H. Fane*, on the behalf of *A. Fane*, prays the judgment; but it is not stated that he does at her instance, and there is a material distinction between the two phrases. For the latter necessarily implies a previous communication, which the former does not. Then comes the appearance of the defendant, and his plea of not guilty, after hearing the information read. Now as the information is wholly silent as to the person at whose instance the charge is made, the defendant is unapprised of that circumstance; and it is to be observed, that if that fact had formed part of the information, the plea of not guilty would have put it in issue, and made it necessary for the prosecutor to prove it. I am, therefore, of opinion, that the act of parliament requires the information to be in the name, or at the instance of the party grieved, and that that must appear both in the information and in the evidence stated in the conviction. And that not having been done in this case, this conviction must be quashed.—*Holroyd* J. All the facts necessary to subject the party to the penalty imposed by the act of parliament, must appear upon the information, and be established by proof. It is indeed here stated, that the person applying, appeared on the behalf of the lady of the manor, but that is only the language of the justices, and the information does not contain any allegation, that it is prosecuted at her instance. The case of *Rex* v. *Corden* is an authority to shew that that is necessary.—*Best* J. It is not clear that the lady of the manor has ever adopted this proceeding; and she may, for any thing that appears here, still bring an action for the penalty. Now the party ought not to be oppressed by two prosecutions for one offence. The conviction is therefore bad and ought to be quashed. *Conviction quashed.*

It has been lately decided, in the following case, that a stream of water running by the side of a piece of ground, and forming

part of the inclosure of the ground, is not a stream "in inclosed ground," within the meaning of this section of the statute: though it appeared that the ground was inclosed on every other side of it, and that the ground on the opposite side of the stream was likewise inclosed, though the property of a different person. 5 G.3. c.14. R. v. Daman.

Lisle v. *Brown*, *E.* 54 *G.* 3. 1 *Marsh.* 127. *S. C.* 5 *Taunt.* 440. The plaintiff declared, on the stat. 5 *G.* 3. *c.* 14. § 3., that the defendant, on the 29th of *May*, 1813, at the parish of *Ellingham*, in the county of *Hants*, in a certain stream of water of the plaintiff, (not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to a dwelling-house, but in a certain other inclosed ground, the private property of *T. C.*) did, without the consent of the plaintiff, the then owner of the fishery in the said water, take, &c. divers fish, without any just right or claim, &c. against the form of the statute. The defendant pleaded not guilty. At the trial of the cause at the last *Lent* assizes for the county of *Hants*, before Mr. Justice *Bayley*, it appeared that the close, in which the stream of water was alleged in the declaration to be, was inclosed on every side, except on that towards the river; and that the ground on the opposite side of the river, though likewise inclosed, was the property of a different person. The learned judge was of opinion, that the close, being open towards the river, was not an inclosed ground within the meaning of the act, and therefore directed a nonsuit. It was moved to set aside this nonsuit, on the ground, that the place in question was inclosed as much as, from the nature of its situation, it could be. — *Gibbs* C. J. The declaration states that the defendant took the fish in a stream "in certain inclosed ground, the property of *T. C.*:" How can the stream be said to be in inclosed ground, when it only runs by one side of it, forming, in fact, part of the inclosure? I agree with my brother *Bayley*, that this was not within the meaning of the act, for it was intended by the act, that land which was not secured from invasion by inclosure, should not be within the meaning of it. The rest of the Court concurred, and the rule was *refused*.

A stream of water running by the side of a piece of ground, which is inclosed on every side, except that on which it is bounded by the water, is not *a stream in inclosed ground*, within the meaning of the 5 G.3. c.14. § 3., so as to subject a person fishing therein, to the penalty inflicted by that act.

It is property, which, from the nature of the thing, is not and cannot be inclosed. S.C. 5 Taunt. 441.

Rex v. *Sadler*, *H.* 1787. *Cas. temp. Ld. Mansfield*, 2 *Chitt. Rep.* 519. The defendant was convicted on stat. 5 *G.* 3. *c.* 14. § 3. in a penalty of 5*l.* The conviction, in setting forth the information, proceeded as follows: — "*Staffordshire*, to wit: Be it remembered, that on, &c. at, &c. *W. Sims*, of, &c. gamekeeper to Sir *John Wrottesley*, Bart. cometh before me, &c. and giveth me to understand, &c. that on, &c. at &c. one *J. S.*, &c. labourer, did kill, take, and destroy, or attempt to kill, take, and destroy the fish in a river or stream, commonly called the *Smestal*, in the parish of *Wombourn*, in the county aforesaid, without the consent of the said Sir *J. W.*, Bart., he the said Sir *J. W.* being then the owner of the fishery within the river or stream aforesaid, in the parish of *Wombourn*, aforesaid, in the county aforesaid, the same not being in any park or paddock, or in any garden or orchard or yard adjoining or belonging to any dwelling-house, whereupon afterwards, to wit, on the thirteenth *July*, in the year aforesaid; at &c. aforesaid, he the said *J. S.* being by virtue of my warrant brought before me, the justice aforesaid, to answer to the said charge contained in the said information, and having heard the same, he the said *J. S.* is asked by me the said justice, if he can say any thing for himself

A conviction stating an offence to have been committed in the alternative, is bad.

A conviction under stat. 5 G.3. c.14. for killing fish in a private river without the consent of the owner, should state the offence to have been committed in *an inclosed* ground.

5 G.3. c.14. R. v. Sadler.

why he should not be convicted of the premises charged upon him as aforesaid; and because he the said *J. S.* doth not say any thing in his own defence, touching or concerning the premises, and doth not pretend to have any just right or claim to take, kill, or destroy any fish within the river or stream aforesaid, but doth of his own accord freely and voluntarily acknowledge and confess all and singular the said premises to be true; and because all and singular the premises being heard, and fully understood by me the said justice, it manifestly appears unto me, that he the said *J. S.* is guilty of the offence aforesaid so laid to his charge; it is therefore adjudged by me the said justice, that he the said *J. S.* is guilty of the offence aforesaid, and that he be, and he is hereby convicted by me the justice aforesaid, of the premises, according to the form of the statute in that case made and provided; and I, the justice aforesaid, do award and adjudge, that for the premises aforesaid, he the said *J. S.* hath forfeited the sum of five pounds of lawful money of *Great Britain*, to be paid as the statute aforesaid doth direct. In witness, &c." — *Bower*, on a former day, had obtained a rule to shew cause why the conviction should not be quashed, for two objections, viz. that it was wrong in stating the offence *in the alternative*, that the defendant did kill, &c. *or* attempt to kill, &c. and that it did not state the offence to have been committed in an inclosed ground. He now moved to make the rule absolute; and on the first objection urged, that it was a well-founded general rule, that in all legal proceedings charging a party with an injury or crime, the nature of such injury or crime must be so described, that the defendant may know what he is called upon to answer; that the jury [or, in this instance, that the justice] may appear to be warranted in their conclusion of "guilty" or "not guilty," upon the premises delivered to them; and that the court or judge may see such a definite injury or crime, that they may apply the remedy or the punishment which the law prescribes. For this he cited 2 *Cowp.*682. 3. 1 *Ld. Raym.* 171. (*b.*) On the second objection, he contended, that to bring an offence within the meaning of the 5 *G.*3. it should be committed within some "inclosed ground;" and that the conviction being deficient in this statement it was bad. — The Court admitting the validity of these objections, the conviction was quashed. See also 3 *T.R.*159. *Doug.*278.

The fish need not be stated to be the goods, &c. of the owner.

Hunsdon's case, O. B. 1781. 2 *East's P. C.* 611. Indictment against *J. H.* on stat. 5 *G.*3. *c.*14. § 1. charged him with unlawfully entering a garden of *A. T.* adjoining and belonging to her dwelling-house, in which was a certain pond used for keeping fish, and without *A. T.*'s consent, with a certain net, stealing, and taking out of the said pond a certain quantity of live gold and silver fish *of the goods and chattels of the said* A. T. against the form of the statute. On evidence it appeared that the pond out of which the fish were taken adjoined to the house, and was about 20 yards in length and 10 in breadth; that gold fish and other fish were kept in it, which were usually fished for with a hook and line. It was objected, that fish in an open pond were *feræ naturæ*, unreclaimed, and not the property of any particular person, as they were laid to be in the indictment. In answer to which a distinction was taken on the part of the crown, that this was not an indictment for a felony, but only for a misdemeanor on the statute [which it is to be observed, uses the word *steal*], though the punishment directed was transportation. In *E. T.*

1781, all the judges held the indictment good, the case being fully brought within stat. 5 *G.* 3., without the allegation that the fish were the goods and chattels of any person, and therefore that part of the indictment was surplusage. But if the indictment had been at common law for felony, it was the opinion of some that it should have described what sort of a pond it was, that it might appear on the face of the indictment that taking fish out of such a pond was felony.

9 G. 1. c. 22. Felony by the Black Act.

By the Black Act, (9 *G.* 1. *c.* 22.) if any person being armed with any offensive weapon, and having his face blacked or otherwise disguised, shall unlawfully steal or take away any fish out of any river or pond, or shall unlawfully and maliciously break down the head or mound of any fish pond whereby the fish shall be lost or destroyed, or shall forcibly rescue any person lawfully in custody for such offence, or by gift or promise of money or other reward, procure any other of his majesty's subjects to join with him therein, he shall be guilty of felony; and being duly convicted thereof, or of procuring, counselling, aiding, or abetting the commission thereof, he shall by stat. 4 *G.* 4. *c.* 54. § 1. be liable, at the discretion of the Court, to be transported beyond the seas for the term of seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three years.

4 G. 4. c. 54. Offenders to be transported or imprisoned not exceeding three years.

It is not an offence within 9 G. 1. c. 22. to break down the head or mound of a fish-pond, in order to let the water out and steal the fish.

Ross's case. Leic. Sp. Ass. 1800. 2 *East's P. C.* 1067. *Thomas Ross* was indicted on stat. 9 *G.* 1. *c.* 22. for unlawfully, maliciously, and feloniously breaking down the head and mound of two fish ponds in a place called *Bosworth Park*, belonging to Sir *Wolston Dixie*, Bart. "*whereby the fish therein were lost and destroyed.*" It was proved that a part of the head or mound of one of the ponds had been cut down to a considerable depth by two persons, of whom the prisoner was one, so as to leave but little water in the pond, and that the fish were gone. But it appeared to have been the object of the offenders to *steal* the fish, and not to let them escape through the breach in the mound, for the weeds were much trodden down in the pond, manifestly in searching for fish; and the two persons had been seen with sacks, which there was evidence sufficient to prove were filled with fish, and there was no evidence to shew that any of the fish had escaped through the cut, or that it was the occasion of their loss or destruction any otherwise than by rendering it more easy to take them when the greatest part of the water was let off. — *Chambre* B. at first was inclined to think that though the prisoner might have been indicted for a misdemeanor under stat. 5 *G.* 3. *c.* 14., the case proved did not support the indictment for the felony, conceiving that stat. 9 *G.* 1. *c.* 22. was meant to apply only to cases of malicious mischief, and then the breaking of the mound was the immediate cause of the loss and destruction of the fish, and not merely auxiliary to the destruction of them by other means; but not recollecting any case upon the construction of this clause, he left the evidence of the facts to the jury, who found the prisoner guilty, and he respited judgment in order to take the opinion of the judges upon the question of law.—In *T. T.* 1800, the judges, on conference, held the conviction wrong, as the clause against breaking the heads, &c. of ponds does not extend to cases where the object of the party was to steal the fish; which is guarded against by another clause; and that even if the offence proved had

been originally within the Black Act, it was virtually taken out of it by the subsequent statute of *5 G.3. c.14.*

Perhaps, (observes Mr. *East,*) stat. *5 El.*, which was not adverted to upon that occasion, may also be thought to meet the case so far as concerns the act of cutting the dam with intent to steal the fish. *2 East's P. C.* 1068.

II. Rules concerning the Assize, and preserving the Breed of Fish.

1 G.1. st.2. c.18. *Salmon.*

By stat. 1 *G.*1. *st.*2. *c.*18. § 14. If any person shall lay or draw any net, engine, or other device, or wilfully do or cause any thing to be done in the *Severn, Dee, Wye, Teame, Were, Tees, Ribble, Mersey, Dun, Air, Ouze, Swaile, Calder, Wharf, Eure, Darwent,* or *Trent,* whereby the spawn or fry of salmon, or any kepper or shedder salmon, or any salmon not 18 inches or more from the eye to the extent of the middle of the tail, shall be taken and killed, or destroyed; or shall make, erect, or set any bank, dam, hedge, or stank, or net, cross the same, whereby the salmon therein may be taken, or hindered from passing up to spawn; or shall between *July* 31, and *Nov.* 12, (except in the *Ribble,* where they may be taken between *Jan.* 1. and *Sept.* 15.) take, kill, destroy, or wilfully hurt any salmon of any kind or size in any of the said rivers; or shall after *Nov.* 12. yearly, fish there for salmon with any net less than 2½ inches in the mesh; he shall on conviction, in one month, before one justice, on view, confession, or oath of one witness, forfeit *5l.* and the fish so taken, and the nets, engines, and devices used in doing the same; half the said sum to the informer, and half to the poor; to be levied by distress, rendering the overplus; for want of distress, to be committed to the house of correction, or other county gaol or prison, not more than three months, nor less than one, there to be kept to hard labour, and suffer such other corporal punishment as the justice shall think fit: the said justice shall order the nets, engines, and devices to be cut or destroyed in his presence, and shall cause the banks, dams, hedges, or stanks, to be demolished and removed at the charge of the offender, to be levied in like manner.

Note: It is not said who shall have the fish; so that it seemeth that they are forfeited to the king.

Salmon sent to London to weigh 6 lbs.

§ 15. And no salmon shall be sent to fishmongers or their agents to *London,* under six pounds weight; on pain that the sender, buyer, or seller on the like conviction, shall forfeit *5l.* and the fish; half the penalty and fish to the informer, and half to the poor; the said sum to be levied by distress; for want of sufficient distress, to be committed to the house of correction, or other county gaol or prison, there to be kept to hard labour for three months, if not paid in the mean time.

§ 17. And persons aggrieved may appeal to the next sessions.

Salmon spawn and smelts. 13 Ed. 1. st. 1. c.47. 13 R.2. st. 1. c.19.

By stat. 13 *Ed.* 1. *st.* 1. *c.*47. No salmon shall be taken in the *Humber, Ouze, Trent, Donee, Arre, Derewent, Wharfe, Nid, Yore, Swale, Tese, Tine, Eden,* or any other water wherein salmon are taken, between *Sept.* 8. and *Nov.* 11. Nor shall any young salmon be taken at mill-pools (nor in other places, 13 *R.*2. *st.* 1. *c.*19.) from the midst of *April* until the Nativity of St. *John* Baptist, on pain of having the nets and engines burnt for the first offence;

for the second, imprisonment for a quarter of a year; for the third, a whole year, and as the trespass increaseth, so shall the punishment. And overseers shall be assigned to enquire hereof. That is, under the great seal, and by authority of parliament. 2 *Inst.* 477.

43 G. 3. c. lxi. With respect to the rivers *Teign*, *Dart*, and *Plym*.

By stat. 43 *G.* 3. *c.* lxi. § 1. Whereas the periods limited by the said acts of 13 *Ed.* 1. & 13 *R.* 2. are not suited to the fisheries for salmon, salmon peal, or salmon kind, or bouges, otherwise sea trout, or to the protection of the spawn or fry of salmon in the rivers commonly called the *Teign*, *Dart*, or *Plym*, in the county of *Devon*, and have been found very prejudicial to the owners and proprietors of the fisheries in such rivers, and to the public; and whereas it is necessary that provision should be made for the better preservation of salmon, and the spawn, fry, or young brood of salmon, salmon peal, salmon kind, and bouges or sea trout, in the said rivers *Teign*, *Dart*, and *Plym*, and in the several rivulets or streams of water communicating therewith, it is enacted, that it shall be lawful for the respective owners and proprietors, and persons legally intituled to fish in the said rivers or waters called the *Dart*, *Teign*, and *Plym*, in the said county, or in any of the streams of water or rivulets communicating therewith, and their respective servants and agents, at any time in the year between the 4th of *March* and the 4th of *December*, within the *Teign*, and the several rivulets or streams communicating therewith, with legal and proper nets, or hooks and lines, to take, kill or destroy any salmon, salmon peal, or salmon kind, and to offer to sale, any such fish so taken between the said periods within the *Teign* and the several rivulets or streams communicating therewith; and also at any time between the 15th of *February* and the 15th of *November* within the said rivers *Dart* and *Plym*, and the several rivulets or streams communicating therewith, with legal and proper nets, &c. to take, &c. any such salmon, &c. within the said *Dart* and *Plym*, and the several rivulets or streams communicating therewith, and to offer the same to sale when so taken between the said last-mentioned periods, within the said last-mentioned river and waters; and that all such fish shall be considered to be in season, and proper to be killed.

Power for legal owners, &c. to take salmon, &c. with legal nets at certain times.

For restraining persons taking salmon, &c. or pursuing or injuring the same.

§ 2. Provided that no such owner or other person, nor any of his servants or agents, nor any other person, shall at any time within the *Teign*, or any of the waters communicating therewith on or between the 4th of *Dec.* 1803, and the 4th of *March* 1804, or at any time or times in any subsequent year on or between the 4th of *Dec.* and the 4th of *March* following; and that no such proprietor or other person, nor any of his servants or agents, nor any other person, shall at any time within the said rivers *Dart* and *Plym*, or either of them, or any of the waters communicating therewith respectively, on or between the 15th of *Nov.* 1803, and the 15th of *Feb.* 1804, or at any time or times in any subsequent year on or between the 15th of *Nov.* and the 15th of *Feb.* following, take, kill, or destroy, pursue, hurt, or injure, or attempt, or endeavour, or seek to take, kill, or destroy, or to pursue, hurt, or injure any salmon, salmon peal, or salmon kind, or any of the spawn, brood, or fry of salmon, or any kepper or shedder salmon, by any means whatsoever; nor shall any person offer to sale, or dispose of any of the said fish so taken in the said rivers and

43 G.3 c. lxi.

waters within the periods last aforesaid; and that no person shall at any time hereafter, either within such periods or otherwise within any or either of the said several rivers or waters communicating therewith, pursue, take, kill, or destroy, or seek, or endeavour to take, kill, or destroy, pursue, hurt, or injure any of such fish by means of any engine commonly called a spear, or with any other engine or device of that nature: nor shall any person offer any of such fish for sale if the same shall be so taken as aforesaid.

Sea trout not to be taken but at certain seasons, &c.

§ 3. No bouges otherwise called sea trout shall be taken within the said rivers, or any of the waters communicating therewith, between the 29th of *Sept.* and the 2d of *Feb.* following in any year; and none of the fish herein-before mentioned of whatever kind shall at any time be pursued, taken, killed, or destroyed, or attempted so to be, or to be otherwise hurt or injured, within any of the said rivers, or the said waters, on a *Sunday*.

Penalties on persons selling salmon or offering the same for sale.

§ 4 And after the passing of this act, every person who shall pursue, take, kill, or destroy, or endeavour or attempt to pursue, take, kill, or destroy, or be aiding or assisting in the pursuing, taking, killing, or destroying any salmon or other such fish as aforesaid, or spawn, brood, or fry aforesaid, in any or either of the said rivers, or within any of the several waters communicating therewith, or with either of them; or shall sell or expose to sale any such salmon, or other such fish taken contrary to this act, or between the periods before specified in relation to any such fish as aforesaid, and who shall be thereof convicted before any justice for the said county, either upon view or by confession, or by the oath of one witness, or any such owner or proprietor, or other such person legally entitled to fish as aforesaid, or of his agents or servants, shall for the first offence forfeit any sum, to be ascertained by such justice, not less than 40*s.* nor more than 5*l.*, together with such fish and all the nets, and other instruments used or kept for the purpose of committing any such offence, and for the second offence shall forfeit not less than 40*s.* nor more than 10*l.*, to be ascertained as aforesaid, together with all such fish nets and other instruments as aforesaid; one half of such penalty to go to the informer, and the other half to the poor of the parish or parishes where the offence was committed; such penalty to be levied by distress, by warrant of such justice or justices, rendering the overplus, &c., and for want of such distress, or of payment of such penalty on demand, then such offender shall for every such offence be sent to the house of correction of the county where taken, to be kept to hard labour not exceeding six calendar months, nor less than two calendar months; and the said justice or justices shall order such nets, &c. to be seized and immediately cut in pieces or otherwise destroyed or disposed of in his or their presence, as he or they think proper.

Allowing an appeal.

§ 5. All persons who think themselves aggrieved by any judgment of any justice or justices in any case aforesaid may appeal to the justices of the said county of *Devon* at their next general quarter-sessions for the said county, who are hereby empowered finally to determine the same; so that the person appealing enter into a recognizance before such justice or justices with sufficient sureties to abide the event of such appeal and the determination thereon, and so that such person so appealing shall by himself or

his agent give ten days previous notice in writing of such appeal to the party against whose act such appeal shall be made; and the justices at the said sessions are hereby required to hear and determine the matter of every such appeal, and make such order therein, and award such costs as to them shall seem reasonable; and by their order or warrant to levy the costs so awarded by distress and sale, &c. rendering the overplus, &c. after deducting the charges, &c.; which determination shall be final and conclusive to all parties concerned, and not removable by *certiorari*, or any other writ or process whatsoever, into any court of record at *Westminster*. 43 G. 3. c. lxi.

By stat. 58 *G.* 3. *c.* 43. § 1. "For preventing the destruction of the breed of *salmon* in the rivers of *England*," after reciting that "whereas provision has been made, in various acts of parliament, for preventing the destruction of salmon, and other fish of the salmon kind, in the several rivers in *England* named therein, and in estuaries and arms of the sea near the mouths of the said rivers; and it would be of great public advantage if such protection should be afforded generally in all rivers throughout *England*:" it is enacted, "that it shall be lawful for the justices assembled at any general or quarter sessions of the peace from time to time to appoint conservators or overseers for the preservation of the salmon, and fish of the salmon kind, and the brood, spawn, and fry thereof, and preventing the destruction thereof, and enforcing for that purpose the provisions of this act within the limits of the jurisdiction of such justices, and within the limits of which they shall be so appointed." 58 G. 3. c. 43. Justices at sessions to appoint Conservators of rivers;

§ 2. Where no provision is made by any act now in force for limiting the times within which it shall be lawful to take salmon, or fish of the salmon kind, in any of the rivers in *England*, it shall be lawful for the justices acting for the several counties, at their several quarter sessions of the peace, and they are hereby required, at the request of any person, such person having first given notice, in some newspaper usually circulated within the county, of his intention to apply to the said quarter sessions in that behalf, to fix certain days, not exceeding 150 days in each year, for each river within their respective counties, to be *fence* days for the several rivers respectively; during which time it shall not be lawful for any person whatever to take, kill, or destroy, or attempt to take, kill, or destroy, any salmon or salmon trout, or fish of the salmon kind, or any brood, spawn, or fry of such fish; and the said justices are further empowered, at any general quarter sessions, to vary annually the number of such days, and the periods at which they shall commence. and to fix periods or *fence* days in which salmon shall not be taken, &c.

§ 3. If any person shall at any time hereafter pursue, take, kill, or destroy, or seek or endeavour to take, kill, or destroy, pursue, hurt, or injure, any salmon or salmon kind, by laying or using any hot lime or filth, or material or drug pernicious to fish, or using any water in which any green lint or flax has been steeped, or letting off stagnated water, or any water impregnated with any material or drug pernicious to fish; or if any person shall use or employ any such means as aforesaid, or use any fire or light or white object, or lay down any kind of net, engine, or device, or wilfully do or commit, or cause to be done or committed, any act whatsoever, in any river, water, rivulet, stream, mill-dam, mill-sluice, cut, pool, or pond communicating therewith, for the destruction of the brood, Penalty on persons destroying salmon, or the brood, spawn, or fry thereof.

58 G.3. c.43. spawn, or small fry of salmon therein (angling excepted); or if any person shall hereafter make, erect, or set any bank, dam, hedge, or stank, net or nets, or place any fire or fires, light or lights, or any white object or objects, so that the young fry or young salmon be prevented from going down from such rivers, rivulets, or other waters communicating therewith as aforesaid, or any of them, every such person shall for every such first offence forfeit any sum not exceeding ten pounds nor less than five pounds, and for every second and subsequent offence any sum not exceeding fifteen pounds nor less than ten pounds, at the discretion of the justice before whom the offender shall be convicted, and shall also forfeit all the fish, spawn, brood, or fry so taken, and all the nets, weapons, lines, instruments, boats, devices, or things used in the taking thereof.

Penalties.

Penalty on persons having in possession spawn, fry, or brood of fish, unsizeable fish, or kepper, &c. or old salmon, &c.

§ 4. No person shall, at any time after 1st *September*, 1818, take, kill, or destroy, or knowingly have in his or her possession, either on the water or on the shore, or shall bring to shore, or cry or carry about, sell, offer, or expose to or for sale, or shall exchange for any goods, matter, or thing, any spawn, fry, or brood of fish, or any unsizeable fish, or any kepper or shedder salmon, being unseasonable salmon commonly called *old salmon*, or any salmon caught in any river during the periods when fishing for salmon is prohibited under the provisions of any law now in force, or when the same shall be prohibited by any order to be made by the justices at their sessions as hereinbefore provided; and it shall be lawful for any conservator or overseer thereof, or any other person, under the authority of this act, to take and seize all or any such spawn, fry, or brood of fish, or such other fish as aforesaid, wherever the same shall be found, together with all baskets and package in which the same shall be so found or taken, and to deliver the person on whom the same may be found to a constable or other peace officer; and after every such seizure shall be made, the spawn, fry, or brood, or other fish as aforesaid, together with the baskets and package in which the same shall be so seized, shall be delivered into the hands of some constable or other peace officer; and every such constable or other peace officer is hereby authorized and required to take every such offender with whom he shall be so charged for any such offence into his custody, and also the spawn, fry, or brood of fish, and such other fish as aforesaid, and all baskets and packages in which the same shall be so seized, and which shall be delivered to such constable or other peace officer, and to carry such offender, and all such spawn, fry, or brood of fish, and such other fish as aforesaid, together with the baskets and package, with all convenient speed, before some justice or magistrate of the county, city, or place where the offence shall be committed, for such offender to be dealt with according to law; and on the conviction of any such offender for any such offence, before any such justice or magistrate, every such offender shall forfeit all such spawn, fry, or brood of fish, unsizeable fish, and fish out of season, which shall be so seized, together with all baskets or package in which the same shall be so seized; and all such spawn, fry, or brood of fish, or such other fish, together with such baskets and package in which the same shall have been so seized, shall, by order of the justice before whom the same shall be so brought, be delivered to the

person who shall have so seized the same, and shall prosecute to conviction any such offender; and every offender who shall be so convicted of any such offence shall besides forfeit for every such offence any sum not exceeding 10*l.* nor less than 5*l.*

58 G.3. c.43.

Penalty.

§ 5. Nothing herein contained shall extend to legalize, nor to demolish, take away, or destroy any net, fish lock, coop, bay, or other work, which shall have been or may hereafter be lawfully erected, put, placed, fixed, or used in any such arm of the sea, or estuary or mouth of any river, or in or upon any bank, sand, or shore thereof, or near thereto, or in or near any river, rivulet, brook, stream, pond, pool, or other water, mill-lead, mill-dam, sluice, or cut, which runs into or otherwise communicates therewith, or to the present modes or methods used for taking and killing fish therein, other than and as are in this act particularly prohibited.

Act not to affect the present modes of fishing.

§ 6. Every the pecuniary and other penalties and forfeitures by this act imposed may be sued for, recovered, and adjudged, and every offence against this act heard and determined, by and before any one or more justices of the peace or magistrate for the county, shire, division, city, or place wherein any offender against this act shall be or reside, or wherein or near to which the offence shall be committed, upon the oath or affirmation of one witness, or by the confession of the party; which oath or affirmation every such justice and other magistrate is hereby empowered to administer; and in case any person who shall be convicted of any offence against this act, and shall not immediately upon such conviction pay down the penalty, together with such costs, into the hands of the justice or magistrate, before whom he shall have been so convicted, or other person authorized to receive the same, in order that the same may be distributed according to the directions of this act, it shall be lawful for any such justice or magistrate to order any constable or other peace officer to take the charge of and keep in custody any such person so convicted; and immediately thereupon every such justice or magistrate is hereby authorized, empowered, and required to grant his warrant in due form of law, and thereby commit every such offender to the common gaol or house of correction for the county, shire, division, city, or place for which such justice or magistrate shall act, for such time hereinafter mentioned, unless the said penalty and costs shall be sooner paid; or otherwise such justice or magistrate may grant his warrant (K.) in due form of law, to levy and recover the said penalty and costs by distress and sale of the offender's goods and chattels; and all penalties and forfeitures which shall be so paid or levied shall from time to time be paid, applied, and disposed of as follows; (that is to say,) one moiety thereof to the informer, and the other, after defraying all costs, charges, and expences attending the prosecution, and the levying and recovering of the penalty, to the overseers of the poor of the parish or place where the offence shall have been committed; and the overplus of the money levied remaining (if any there be), after any penalty, and all costs, charges, and expences attending the levying and recovering thereof are deducted, (which costs, charges, and expences shall always be ascertained by the justice or magistrate before whom any such offender shall be convicted,) shall on

Recovery of penalties.

See forms G. H. I.

K.

58 G.3. c.43.

demand be returned to the owner of the goods so distrained; and in case sufficient distress shall not be found, or such penalty and costs shall not be immediately paid, then it shall be lawful for any such justice or magistrate, and he is hereby authorized, empowered, and required, for the first offence to commit (L.) every such offender to such gaol or house of correction for any time not exceeding four months nor less than two months; for the second offence any time not exceeding eight months nor less than six months; and for the third and every other offence, for any time not exceeding twelve months nor less than eight months, there to be kept at hard labour, and be and remain without bail or mainprize.

1st offence. L. offence. offence.

Justices, on receiving information, may grant warrants for apprehending offenders. G. H.

§ 7. It shall be lawful for any justice or magistrate, upon information (G.) being made to him upon oath against any person who shall offend against any thing contained in this act, to grant his warrant to apprehend any person so offending, and cause such offender to be brought before him, or some other such justice or other magistrate; or it shall be lawful for any such justice or magistrate, upon any information made without oath, to grant his summons (H.) against the party charged with any such offence, or for any witness to prove any such offence; and if any such person who shall be duly summoned shall neglect to appear at the time and place appointed by such summons, every such justice or magistrate may, upon oath being made of the person being so duly summoned, grant his warrant to apprehend and bring before him or some other such justice or magistrate the party who shall neglect to appear, and such justice or magistrate shall inquire into, hear, and determine the matter of every such offence in a summary way.

Owners, &c. of fisheries may be witnesses to prove offences.

§ 8. No owner, farmer, or occupier of, or any person otherwise interested in any fishery or right of fishing in any arm of the sea, river, or other water aforesaid, shall be deemed an incompetent witness to prove any offence committed against this act, by reason of his or her being such owner, farmer, or occupier.

Penalties may be sued for.

§ 9. Every pecuniary penalty and forfeiture imposed by this act may be recovered in a summary manner according to the provisions of this act, or may be sued for and recovered, together with full costs of suit, by and to the only proper use and behoof of any person who shall inform or sue for the same in any court of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, wager of law, nor more than one imparlance shall be allowed.

Form of conviction.

§ 10. Every conviction shall be certified by the justice by and before whom made, to the general quarter sessions of the peace to be held in and for the county, riding, division, city, or place where the offender shall be convicted, and there filed amongst the records; and every conviction shall be in the form of words, or to the following effect:—

BE it remembered, that on the ——— *day of* ——— *in the year* – ——— A. B. *was, upon the complaint of* C. D. *convicted before me* [or *us*] E. F. *one* [or *two*] *of his majesty's justices of the peace* [as the case may be] *for* ——— *in pursuance of an act made in the fifty-eighth year of the reign of*

his majesty king George *the third,* [insert the title of the act,] (*a*) *for that the said* ——— [state the offence,] [and if a case in which different penalties are imposed for repeated offences] *this being the first offence, second,* or *third offence,* [as the case may be,] *and I* [or *we*] *do hereby adjudge him* [*her* or *them*] *to pay and forfeit for the said offence the sum of* ——— *of lawful money of* Great Britain, *together with the further sum of* ——— *for costs of suit and prosecution, to the said* C. D. *Given under my hand and seal,* [or, *our hands and seals,* as the case may be,] *at* ——— *in the county of* ——— *the day and year above written.* **58 G.3. c.43.**

Which said conviction and adjudication shall be good and valid in law to all intents and purposes, and shall not be quashed, set aside, or adjudged void or insufficient for want of form only; and shall not be liable to be removed by *certiorari* into the court of K. B., or any other court of record at *Westminster.*

Persons convicted under this act, not to be prosecuted under any other.

§ 11. Where any offender shall be punished for any offence by virtue of this act, such offender shall not again be prosecuted nor incur any penalty by virtue of any other law or statute now in force, or be liable to any other punishment for the same offence.

Appeal.

§ 12. Every person who shall think himself aggrieved by the judgment of any justice of the peace or magistrate in any of the cases aforesaid, may appeal to the justices of the peace for the county, shire, division, city, or place where such judgment shall be given, at the then next or next but one general quarter-sessions of the peace; but no such appeal shall be received, heard, or determined, unless the appellant shall, within ten days next after such judgment, and twenty days at the least before the holding of such sessions, give and leave in writing, as well at the public office of the clerk of the peace for such county, shire, division, city, or place where such person or persons shall be convicted, as to the person or at the dwelling house of the informer or prosecutor, of his intention to bring such appeal, and shall also enter into a recognizance (I.) before such justice, in such sum as any I.
such justice of the peace shall think fit, not exceeding twenty pounds, conditioned to try such appeal, and likewise to pay the costs of such appeal, in case judgment and sentence shall upon the hearing thereof be given against the appellant, within ten days next after the determination thereof; and the said justices at their said session shall and may, upon due proof of such notice given as aforesaid, hear and determine every such appeal in a summary way, and shall award or order to the party in whose behalf such appeal shall be determined such costs and charges as they in their discretion shall think reasonable and just, to be paid by the party against whom such appeal shall be determined; and in case such costs and charges shall not be paid within the space of ten days next after the hearing and determining of such appeal, the same may be levied by distress and sale of the goods and chattels of the person ordered to pay the same, or his surety or sureties, in the same manner and by the same means as all distresses are ordered to be taken by virtue of this act.

(*a*) Viz. "An act for preventing the destruction of the breed of salmon and fish of salmon kind in the rivers of *England.*"

58 G.3. c.43.

Limitation of actions.

§ 13. No action of law shall be brought or commenced against any person for any thing done or to be done in execution of this act, until one calendar month after notice thereof in writing shall have been given to the person against whom such action shall be intended to be brought, or left at his last or usual place of abode, setting forth the cause of such action, and containing the name and place of abode of the plaintiff or plaintiffs, and also of his or their attorney; and every such action shall be brought within three calendar months next after the cause of action shall arise, and shall be laid and sued in the county, shire, division, city, or place where the fact shall have been committed; and the defendant therein may plead the general issue, and give this act and the special matter in evidence at any trial, and that the same was done by virtue thereof; and also it shall be lawful for such person, at any time before action brought, to tender amends to the party complaining, or his attorney, and in case the same is not accepted, to plead such tender in bar to the action, together with the plea of not guilty, and any other plea, with the leave of the court; and if, on the trial of such action, it shall appear that the same was brought before the expiration of one calendar month next after such notice, or after the end of three months next after the cause thereof shall have arisen, or if such action shall have been brought or laid in any other county or place than as aforesaid, or after sufficient tender of amends shall have been made to the party aggrieved, then and in any of such cases, the jury shall find a verdict for and acquit the defendant; or if the plaintiff discontinue the same after the defendant shall have appeared, or shall be nonsuited, and if, upon demurrer, judgment shall be given against the plaintiff, the defendant in such action shall have double costs, and have the like remedies for recovering the same as defendants have for recovering their costs in other cases at law; and no action, suit, information, or other proceeding whatsoever shall be brought or commenced against any person for any offence against this act, unless the same shall be commenced within six calendar months next after any such offence shall have been committed.

Not to affect the provisions of any former act;

§ 14. Nothing in this act contained shall extend or alter any act or clause, provision, regulation, or penalty or forfeiture contained in any act in force for the regulation of any fishery or fisheries, or the preservation thereof, or of the brood, spawn, or fry of fish, in any particular county or arm of the sea, estuary, or river.

nor the rights of manors.

§ 15. Nothing herein contained shall extend to affect the rights of any lord or lady of any manor; and it shall be lawful for such lord or lady, and they are hereby required, to appoint conservators for the protection of any river or rivers within their respective manors.

Not to affect the rights of corporations;

§ 16. Nothing in this act contained shall extend to prejudice or derogate from the rights, interests, privileges, franchises, or authority of any body politic, corporate, or collegiate.

or of the city of London.

§ 17. Nor of the mayor and commonalty and citizens of the city of *London*, or their successors, or the lord mayor of the said city.

45 G.3. c.xxxiii.

And by stat. 45 *G*.3. *c*.xxxiii. certain other provisions are en-

acted with respect to the rivers in the county and borough of *Carmarthen*.

By stat. 13 *R*. 2. *st*. 1. *c*. 19. No person shall put in the waters of *Thamise, Humber, Ouze, Trent,* nor any waters, in any time of the year, any nets called stalkers, nor other nets or engines whatsoever, by which the fry or breed of salmons, lampreys, or any other fish, may in anywise be taken or destroyed; on the like pain. See stat. 13 *Ed*. 1. *st*. 1. *c*. 47. 13 R. 2. st. 1. c. 19.

The waters of *Lone, Wyre, Mersee, Rybbyl,* and all other waters in *Lancashire*, shall be put in defence as to taking of salmon from *Michaelmas* to *Candlemas*, and in no other time of the year. And conservators shall be appointed in like manner.

By stat. 17 *R*. 2. *c*. 9. The justices of the peace (and the mayor of *London* on the *Thames* and *Medway*) shall survey the offences in both the acts above mentioned; and shall survey and search all the wears in such rivers, that they shall not be very strait for the destruction of such fry and brood, but of reasonable wideness after the old assize used or accustomed; and they shall appoint under-conservators, who shall be sworn to make like survey, search, and punishment. And they shall inquire in sessions, as well by their office as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted to come before them; and if they be thereof convict, they shall have imprisonment, and make fine at the discretion of the justices; and if the same be at the information of an under-conservator, he shall have half the fine. 17 R. 2. c. 9.

By stat. 1 *El*. *c*. 17. § 1, 2, 3, 4, 5. No person of what estate, degree, and condition soever he be, shall take and kill any young brood, spawn, or fry of fish; nor shall take and kill any salmon or trouts, not being in season, being kepper or shedder; nor any pike or pikerel not being in length 10 inches fish or more; nor any salmon not being in length 16 inches fish; nor any trout not being in length eight inches fish; nor any barbel not being in length 12 inches: and no person shall fish, or take fish by any device, but only with net or trammel, whereof the mesh shall be two inches and a half broad (angling excepted, and except smelts, loches, minnies, bullheads, gudgeons, and eels); on pain of forfeiting 20*s*. for every offence, and also the fish, nets, and engines. 1 El. c. 17. Spawn in general, and fish under size and out of season.

(Note, in some editions of the statutes it is 20*l*. in others 20*s*.; in the record it is not distinguishable whether it be pounds or shillings. The latter seems more adequate to the offence.)

§ 6, 7. And the conservators of rivers may inquire hereof by a jury; and in such case they shall have the fines.

§ 8, 9, 10. The leet also may inquire hereof; and then the forfeiture shall go to the lord of the leet. And if the steward do not charge the jury therewith, he shall forfeit 40*s*.; half to the king, and half to him that shall sue. And if the jury conceal the offence, he may impannel another jury to inquire of such concealment; and if it be found, the former jury shall forfeit every one 20*s*. to the lord of the leet.

§ 11, 12. If the offence be not presented in the leet within a year, then it may be heard and determined at the sessions or assizes. (Saving the right of the conservators.)

By stat. 33 *G*. 2. *c*. 27. § 13. 15, 16, 17, 18, 19. No person shall

33 G.2. c.27. take or knowingly have in his possession either in the water or on shore, or sell or expose to sale, any spawn, fry, or brood of fish, or any unsizeable fish, or fish out of season, or any smelt not five inches long; and any person may seize the same, together with the baskets and package, and charge a constable or other peace officer with the offender and with the goods, who shall carry them before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor; and the offender shall besides forfeit 20*s.* to be levied by distress by warrant of such justice, and distributed half to the prosecutor, and half to the poor of the parish where the offence was committed (and any inhabitant of such parish, nevertheless, may be a witness); for want of sufficient distress, to be committed to the house of correction to be kept to hard labour for any time not exceeding three months, unless the forfeiture be sooner paid.——— Provided, that the justice may mitigate the said penalty, so as not to remit above one half. Persons aggrieved may appeal to the next sessions. —— And the form of the conviction may be thus: —

BE it remembered that on this ——— day of ——— in the —— year of the reign of———, A. O. *is convicted before me ——— one of his majesty's justices of the peace for the ——— of ———, and I do adjudge him to pay and forfeit the sum of———. Given under my hand and seal the day and year above said.*

Nets standing day and night. By stat. 2 *H.* 6. *c.* 15. No person shall fasten any nets over rivers, to stand continually day and night; on pain of 100*s.* to the king.

III. Of the Herring and other Fisheries.

28 G.2. c.14. Herring fishery. By stat. 28 *G.* 2. *c* 14. §9. If any person shall wilfully damnify, spoil, or destroy, without consent of the society of the *Free British Fishery*, any of the nets, sails, cordage, stores, or other materials belonging to the said society, he shall, on conviction on the oath of two witnesses before one justice, forfeit to the society treble value, to be levied by distress; and for want of sufficient distress, be committed to the house of correction there to be kept to hard labour for any time not exceeding three months, or till satisfaction be made; information to be exhibited, or prosecution to be in six calendar months.

26 G.3. c.81. By stat. 26 *G.* 3. *c.* 81. after 1st *June*, 1787, an annual bounty is granted for seven years to owners of ships of certain dimensions and constructions [which by stat. 27 *G.* 3. *c.* 10. is extended to all vessels however built], of 15 tons and upwards, employed in the *White Herring* fishery, under certain regulations particularly set forth in those acts; and so far as the same fall under the jurisdiction of justices of the peace, it is thought necessary to insert them as follows: —

Casks to be marked. By § 17, 18. On all barrels and casks in which any fish (except fresh fish) shall be packed, either for exportation or home consumption, the names of the curers of such fish shall be marked and burnt with iron, in fair, large, legible, conspicuous, and permanent characters; and the staves of every barrel in which any white herrings, or wet white fish, shall be packed or put up for

exportation, shall not be a less thickness at the bulge than half an inch, and shall be full bound; and in default thereof the same may be seized and secured by any officer of excise or customs; and on proof of the fact on oath, before one justice, the same, together with the casks, shall be forfeited.

26 G. 3. c. 81. Thickness of the staves.

§ 19. And every person who for seven successive years shall have followed the occupation of a seamen or fisherman on board any ship or vessel employed in the fisheries of *G. B.* (being a married man), may set up and exercise such trade as he is apt and able for, in any town or place in *G. B.* without molestation by reason of using such trade, as freely and with the same provisions and regulations as any mariner or soldier by 22 *G.* 2. *c.* 44. are authorized to do. (*a*)

Fishermen may set up trades.

§ 43. And whereas by stats. 1 *G.* 1. *c.* 18. and 9 *G.* 2. *c.* 33. No sort of flat fish nor fresh fish whatsoever (except turbots and lobsters) could be legally imported, or sold in *England*, which were taken by, bought of, or received from any foreigner, or out of any strange bottom (except protestant strangers) inhabiting this kingdom, on forfeiture of 100*l.* by the person offending; and the master of the vessel in which any such fish shall be illegally imported was also liable to forfeit 50*l.* to be recovered in the courts at *Westminster.* And whereas the great expence and delay attending such prosecutions discourage persons from suing for such penalties, it is therefore enacted, that if upon complaint made on oath before two justices by any officer, it shall appear, that he doth know, or is credibly informed, or hath cause to believe that any fish hath been imported or exposed to sale, in the port of *London,* contrary to the aforesaid acts, such justices may summon the person accused to appear before them at a time and place specified in the summons; and if he shall not appear, then on due proof of service of such summons either personally or by leaving the same at his usual place of abode whilst he shall be on shore, or not being on shore, with some person in the vessel to which he belongs, may by warrant cause such person to be brought before them at such time and place as shall be specified in such warrant, and thereupon, whether such party shall appear upon such summons or be apprehended, the justices may proceed to hear and determine the matter of the complaint.

Certain penalties imposed by 1 G. 1. c. 18. and 9 G. 2. c. 33. may be recovered by two justices.

§ 46. All pecuniary penalties by the said act of 9 *G.* 2. *c.* 33. imposed, may be recovered before two justices, on due proof and conviction of the offence, by confession or oath of one witness; and the whole of such penalties shall go to the informer; and if such penalty shall not upon conviction, with the costs thereof, be immediately paid, the same shall be levied by distress and sale; and for want of sufficient distress, the offender shall be sent by the same justices to the common gaol for one year, unless the penalty shall be sooner paid.

All penalties imposed by 9 G. 2. c. 33. may be recovered by two justices.

§ 47. To the end that the person convicted in any of the penalties last aforesaid may not by flight after conviction evade imprison-

Offenders may be detained for 48 hours.

(*a*) Stat. 50 *G.* 3. *c.* 108. § 2. exempts from all liability to be impressed, persons employed in the public fisheries of these kingdoms, in deep waters. This exemption has been held to extend to persons employed in the lobster fishery upon the coast of *Heligoland.* *Payne and Thoroughgood's case,* 1 *M.* & *S.* 225.

26 G. 3. c. 81. ment, such justices immediately after conviction may order such offender into custody (in case the penalty be not immediately paid) during such time, not exceeding 48 hours, as they shall think proper to allow for return of the warrant of distress.

Where the goods are not sufficient to answer the distress. § 48. Provided, that if it shall appear to the satisfaction of such justices, either by confession or other witness, that such party hath not goods or chattels sufficient to answer the penalty, such justices may, without issuing any warrant of distress, commit the party so convicted, as if such warrant had actually issued, and a return of *nulla bona* been made thereon.

Security may be given for payment of the penalty. § 49. Provided also, that if any such offender ordered to be committed shall before his actual commitment to prison procure security to be given by two sufficient sureties for payment of the penalty and charges within 14 days exclusive of the day of conviction, the justices may accept such security; and on non-payment within the time limited, the same or any other justices may cause the party convicted, and his sureties, to be apprehended by warrant, and them may commit to the common gaol, for the same time as the person convicted was liable to have been imprisoned if no security had been given, unless the penalty and charges shall be sooner paid.

Appeal. § 50. Any person so convicted thinking himself aggrieved by the judgment of any justices, may within three calendar months then next appeal to the sessions, giving six days' notice to the informer of such his intent, and with two sureties entering into recognizance before one justice to appear and prosecute such appeal, and abide the order or determination of the same court, and pay the costs awarded at such sessions (if any); and if such judgment be affirmed, the party appealing shall pay to the informer double costs, to be ascertained by order of the court.

§ 51. In case the person appealing shall have paid the penalty into the hands of the justices by way of deposit, or shall be then imprisoned, such person may appeal within the time aforesaid on his entering (without sureties) into such recognizance aforesaid, and remaining in prison in the mean time, or depositing such penalty with the justices until the merits of the said appeal shall be determined.

Conviction not to be set aside for want of form. § 52. No conviction or judgment as aforesaid shall be set aside by the sessions for want of form, or through the mis-stating of any fact, circumstance, or other matter, provided the material facts alleged in such conviction or judgment, and on which such conviction shall be grounded, be proved to the satisfaction of the court; and no such conviction or judgment, nor any order or proceeding of the said court, shall be removed by *certiorari* into any other court.

Witnesses. § 44. Persons appearing in the complaint to be necessary witnesses may be summoned by the justices to appear before them; and in case of non-appearance then on due proof of having been duly summoned may be apprehended by warrant of such justices, and brought before them; and if any witness shall refuse to be sworn, or to give evidence, or wilfully forswear himself, or prevaricate in his evidence, such justices may by warrant commit him to the common gaol for one year without bail.

Written evidence. § 45. And the examination of every witness shall be taken down in writing, by or before the said justices, and in case the party ac-

cused cannot be made to appear at the time of such examination, and such witness cannot be made to attend when such party shall appear; in that case such examination in writing may be read and made use of, and shall have the same effect as if such witness had been examined *vivâ voce*. 26 G. 3. c. 81.

By stat. 48 *G.* 3. *c.* 110. Many important regulations are enacted respecting the herring fishery: but they are not inserted in this place, as being so confined in their nature and objects. It may be observed, however, that by the 57th sect. of the act the several penalties and forfeitures thereof may be recovered in the same manner as penalties and forfeitures under the excise laws. 48 G. 3. c. 110.

Stat. 55 *G.* 3. *c.* 94. After reciting stats. 48 *G.* 3. *c.* 110., 51 *G.* 3. *c.* 101., 52 *G.* 3. *c.* 153., and 54 *G.* 3. *c.* 102., enacts that the same be made perpetual, subject to such alterations as are herein contained. 55 G. 3. c. 94.

Mode of settling disputes between officers and curers.

By § 36. All disputes between officers of the herring fishery and curers or proprietors of herrings, as mentioned in stat. 48 *G.* 3. *c.* 110. shall be settled as follows: "Any justice of the peace to whom application shall be made, either by the officer or curer, shall appoint two skilful persons, who shall have no interest in the matter in dispute; one to be nominated by the officer and the other by the opposite party; and if either party shall fail to make such nomination before or at the time when he shall be required by authority of the said justice (not being longer than twenty-four hours from the time of being required to make such appointment) so to do, then the said justice shall nominate one skilful person, not interested in the matter in dispute, in his place; and the person so appointed, upon examination of the matters in dispute, shall certify on their oaths, to be taken before the said justice, their opinion on the matters aforesaid; and if they shall agree in their opinion, the matter in dispute shall be determined accordingly; but if the arbitrators so to be appointed shall differ in opinion thereon, the said justice shall require them to name one other skilful person, not interested in the matter in dispute, which person so nominated shall examine the matters in dispute, and upon such examination shall certify upon oath, to be made before the said justice, his opinion thereon, and the said matter shall then be finally determined accordingly."

Penalties.

§ 42. All penalties and forfeitures to be sued for, levied, and mitigated, as others by the law of customs and excise; one moiety to be to the king, the other to the informer.

1 & 2 G. 4. c. 79.

The bounty of 3*l.* per ton, granted by the recited acts, repealed.

Stat. 1 & 2 *G.* 4. *c.* 79. § 1. After reciting stats. 48 *G.* 3. *c.* 110. 51 *G.* 3. *c.* 101., 52 *G.* 3. *c.* 153., 54 *G.* 3. *c.* 102., and 55 *G.* 3. *c.* 94. (*supra.*), enacts, that the bounty of 3*l.* per ton granted by the said acts shall, after the 1st of *June*, 1822, cease, so far as regards the *deep-sea* British *white-herring fishery*, in the said recited acts mentioned.

So much of 48 G. 3. c. 110. or any other act, as relates to the appointment of a superintendant of the deep-sea herring fishery, repealed.

§ 2. From and after the 1st of *June*, 1822, so much of stat. 48 *G.* 3. *c.* 110. or of any other act, as relates to the appointment of a superintendant of the said deep-sea fishery, and to the matters and things to be done by such superintendant, shall be repealed: Provided, that nothing herein contained shall extend to repeal any act or provision made for the appointment or employment of a superintendant of the *British* herring fishery, other than the said deep-sea fishery.

The commissioners for the

§ 3. From and after the passing of this act, it shall be lawful for the commissioners for the *British* white-herring fishery from time

1 & 2 G.4. c.79. British herring fishery may make regulations for carrying into execution the purposes of this and the recited acts.

to time to make such rules and regulations, directing by what means and methods the provisions of the acts herein recited, and now in force, or of this act, or of any act hereafter to be made relating to the said fishery, shall be observed, performed, and put in execution, and the purposes thereof duly answered, as to the said commissioners shall seem expedient; and that all such rules and regulations shall be as valid and effectual as if the same were set forth in this act, and shall be obeyed and carried into execution by the officers of the *British* herring fishery, and all other persons concerned; and that no bounty granted by the said act of the 55 *Geo.* 3., or by this act, shall be allowed or paid to any person, unless all such rules and regulations shall be duly complied with.

No bounty to be paid unless rules complied with.

If herrings caught in the Irish fishery shall be produced to the officers of the British fishery, or if caught in the British fishery and produced to the officers of the Irish fishery, for the bounty, the same shall be forfeited, &c.

§ 4. From and after the passing of this act, if any white herrings caught and cured in the *Irish* fishery, and for which any bounty granted for the encouragement thereof shall have been paid or allowed, shall be produced to any officer of the *British* fishery, for the purpose of obtaining any bounty granted for the encouragement of the same; or if any white herrings caught and cured in the *British* fishery, and for which any bounty granted for the encouragement thereof shall have been paid or allowed, shall be produced to any officer of the *Irish* fishery, for the purpose of obtaining any bounty granted for the encouragement of the same, all such herrings, with the barrels containing the same, shall be forfeited, and may be seized by any officer of the fishery, customs, or excise; and the person or persons producing the same shall also forfeit, for every such offence, the sum of 500*l.*, to be recovered and applied in such manner as any penalty under any act in force for the encouragement of the fisheries in *G. B.* or *Ireland*.

If any person buying, &c. fresh herrings shall use, or have in possession, any cran or measure of greater content than required by the regulations of the British herring fishery, he shall forfeit the same, and 10*l.*

§ 5. From and after the passing of this act, if any person buying or receiving fresh herrings shall, for the purpose of ascertaining the quantity thereof, make use of, or shall have in his possession any cran or measure which, whether the same shall or shall not be branded with such marks or characters as is required by stat. 55 *G.*3. *c.*94. shall be of greater content or capacity than is or shall be required by the rules or regulations of the said commissioners of the *British* herring fishery, every such person making use of or having in his possession any such cran or measure, shall forfeit the same, and also the sum of 10*l.*, to be recovered and applied in the same manner as the like forfeitures are directed to be recovered and applied by the last recited act; and the commissioners for the *British* herring fishery shall cause the said cran or measure to be burnt.

§ 6. Giving 4*s.* bounty on every barrel of herrings caught in the Manx fisheries, is repealed, by stat. 5 *G.*4. *c.* 64. § 1. *post.* p. 445.

Regulations, &c. in acts 48 & 55 G 3. extended to the Isle of Man. The bounty extended to the Isle of Man to be paid by the excise in Scotland.

§ 7. All powers or authorities, rules, regulations, restrictions, fines, penalties, or forfeitures, in or by the said acts of the 48 & 55 *G.*3. and this act, as far as the same are or shall be applicable, and can be put in execution, shall extend to and be in force in the *Isle of Man:* Provided, that the bounty hereby extended to the *Isle of Man* shall be paid by order of the commissioners of excise in *Scotland,* in the same manner as the bounty of 4*s.* (now repealed, 5 *G.*4. *c.*64. § 1.) for every barrel of white herrings caught in *British* fisheries, and landed in *G. B.*, is directed to be paid; and that any such fine, penalty, or forfeiture as afore-

said shall or may be sued for, recovered, levied, mitigated, and applied as any fine, penalty, or forfeiture may be sued for, recovered, levied, mitigated, and applied by any law or laws of customs or excise in *G. B.*, or by any law of customs in the *Isle of Man*. (*a*)

1 & 2 G.4. c.79. Recovery of penalties.

§ 8. After reciting stat. 55 *G.* 3. *c.* 94. requiring herrings imported from *Ireland*, or the *Isle of Man*, &c. to have the barrels branded with the names of the countries from whence they come, enacts, that the said act, and the regulations, restrictions, and forfeitures therein contained, so far as relates to white herrings contained in barrels or casks imported or brought into any port or place in *G. B.*, from any port or place in *Ireland* or the *Isle of Man*, shall be repealed.

Regulations in recited act regarding herrings imported in barrels from Ireland, or the Isle of Man, repealed.

§ 9. And any thing by this act directed or required to be done by the commissioners for the *British* herring fishery shall and may be done by such number of them as by the letters patent for the appointment of such commissioners is or shall be determined.

Quorum of commissioners.

By stat. 5 *G.* 4. *c.* 64. intituled " An act to amend the several acts for the encouragement and improvement of the *British* and *Irish* fisheries," and dated 17th *June*, 1824, after reciting, whereas it is expedient that *the bounties* and allowances payable in respect of vessels fitted out and employed in the *British* and *Irish* fisheries, and also in respect of herrings or other fish taken and cured in such fisheries, *should cease*, and that certain other bounties should be granted upon herrings and other fish, it is enacted, that the bounty of 4*s.* per barrel of herrings granted by stat. 55 *G.* 3. *c.* 94. (British *White Herring Fishery*); the bounty of 4*s.* granted by 1 & 2 *G.* 4. *c.* 79. for every barrel of herrings caught in the fisheries of the *Isle of Man*, or other *British* fisheries, in vessels or boats fitted out from the said isle, landed there, and cured and packed as directed by that act; also the bounties granted by stats. 1 *G.* 4. *c.* 103., 59 *G.* 3. *c.* 109., and 1 *G.* 4. *c.* 82. shall be repealed from and after 5th *July*, 1825.

After July 5. 1825, bounties and allowances on British herrings under 55 G. 3. c. 94. 1 & 2 G. 4. c. 79. repealed.

§ 2. Enacts, that from and after 5th *July*, 1825, and until 5th *July*, 1829, the following respective bounties shall be paid; *i. e.* for every barrel of herrings caught, landed, cured, and packed according to the directions of stats. 48 *G.* 3. *c.* 110. or 55 *G.* 3. *c.* 94., or of any other act or acts in force relating to the *British* herring fishery; and also for every barrel of herrings caught in vessels or boats fitted out from the *Isle of Man*, landed there, and cured and packed according to the directions of stat. 1 & 2 *G.* 4. *c.* 79.; and also for every barrel of herrings caught, landed, cured, and packed according to the directions of stats. 59 *G.* 3. *c.* 109. and 1 *G.* 4. *c.* 82., for the encouragement and improvement of the *Irish* fisheries, a bounty of 4*s.* in the year ending 5th *July*, 1826; a bounty of 3*s.* in the year ending 5th *July*, 1827; a bounty of 2*s.* in the year ending 5th *July*, 1828, and a bounty of 1*s.* in the year ending 5th *July*, 1829; and also that there shall be paid until 5th *July*, 1829, to all persons residing in *Great Britain*, and who shall cure and dry cod-fish, ling, or hake, taken on the coasts of *Great Britain*, *Ireland*, or the *Isle of Man*, under the regulations contained in or referred to by stat. 1 *G.* 4. *c.* 103. a bounty of 4*s.* for every hundred weight of such

After July 5. 1825, to July 5. 1829, new bounties shall be paid, viz. 4*s.*, 3*s.*, 2*s.*, and 1*s.* to 5th July yearly, for every barrel of herrings caught and cured according to regulations of British fisheries acts, 48 G. 3. c. 110. 55 G. 3. c. 94., 1 & 2 G. 4. c. 79, &c., and 59 G. 3. c. 109. and 1 G. 4. c. 82. 4*s.* per cwt. on dried cod cured in G. B. until July 5. 1829;

(*a*) This section seems in force, see stat. 5 *G.* 4. *c.* 64. § 4. *post.*

5 G.4. c. 64.

Pickled cod 2*s*. 6*d*. per barrel, under regulations of 1 G.4. c 103. until July 5. 1829.

Bounties in Ireland 4*s*. per cwt. on dried cod, &c. and 2*s* 6*d*. on pickled cod, as in G. B.

dried cod-fish, ling, or hake; and that there shall be also paid under the like regulations, to such persons residing as aforesaid, and curing cod-fish, ling, or hake in the pickle, a bounty of 2*s*. 6*d*. for every barrel of such pickled cod-fish, ling, or hake, until 5th *July*, 1829; and that there shall also be paid to persons residing on the coasts of *Ireland*, and who shall cure and dry cod-fish, ling, hake, haddock, glassen, or conger eel, taken on the coasts of *Ireland* under the regulations mentioned in or referred to by stat. 59 *G*.3. *c*. 109. a bounty of 4*s*. for every hundred weight of such dried cod-fish, ling, hake, haddock, glassen, or conger eel, until 5th *July*, 1829; and that there shall also be paid, until 5th *July* 1829, a bounty of 2*s*. 6*d*. for every barrel of cod, ling, hake, haddock, glassen, or conger eel, taken on the coasts of *Ireland*, and cured with pickle by persons residing in *Ireland*, and curing such fish according to such regulations as the commissioners of the *Irish* fisheries shall from time to time make for that purpose.

Tonnage bounty to vessels engaged in the white fisheries 20*s*. per ton to 5th July 1826. 15*s*. - 1827. 10*s*. - 1828. 5*s*. - 1829.

§ 3. Enacts, that from and after 5th *July*, 1825, and until 5th *July*, 1829, the respective bounties hereinafter mentioned shall be paid to the owner or owners of all such decked or half-decked vessels, or to the person or persons hiring or chartering such vessels as are described in stat. 59 *G*. 3. *c*. 109., for the further encouragement and improvement of the *Irish* fisheries, and in stat. 1 *G*.4. *c*. 103., for the further encouragement and improvement of the *British* fisheries, and which shall be fitted out from any port in the U. K. of *G. B.* and *Ireland*, for the purpose of fishing for and curing cod-fish, ling, hake, haddock, glassen, or conger eel; *viz*. 20*s*. *per* ton for such vessels in the year ending 5th *July*, 1826; 15*s*. *per* ton in the year ending 5th *July*, 1827; 10*s*. *per* ton in the year ending 5th *July*, 1828; and 5*s*. *per* ton in the year ending 5th *July*, 1829.

Bounties under this act payable as bounties on fish and on tonnage under recited acts.

† *Sic*.

By § 4. The bounties by this act granted shall be paid in such manner, and under such directions, and subject to such regulations and restrictions, in all respects, as the bounties heretofore granted under the said recited acts respectively, or any of them, upon such herrings, cod-fish, ling, hake, haddock, glassen, or conger eel, and upon or in respect of the tonnage of any such vessels as aforesaid, are by the said recited act † respectively made payable, and as if all such directions, rules, regulations, and restrictions were repeated and re-enacted in this act, to all intents and purposes whatsoever.

Bounties, how payable: cease on July 5. 1829.

§ 5. Enacts, that the several bounties hereinbefore granted and made payable shall be paid according to the amount thereof in *British* currency, and shall wholly cease on 5th *July*, 1829.

Bounties on Salmon, &c. in G. B. under Schedule (C.) of 43 G 3. c. 69. repealed from July 5. 1825.

By § 6. From and after 5th *July*, 1825, the several permanent bounties granted and made payable on salmon, full red herrings, clean shotten red herrings, and red sprats, and on pilchards and scads, by stat. 43 *G*.3. *c*. 69. and by Sch. (C.) to the said act annexed, shall cease; any thing in that act, or any other act or acts to the contrary notwithstanding.

By § 7. The bounties on pilchards exported from *G. B.* from 5th *July*, 1825, to 5th *July*, 1829, *viz*.—to 5th *July*, 1826, are fixed at 7*s*.,—1827, 6*s*.,—1828, 4*s*.,—1829, 2*s*.;—and shall be paid in such manner and under such directions, and subject to such

rules and restrictions, in all respects, as the bounties on pilchards and scads repealed by this act were paid and payable under any act or acts in force immediately before the passing of this act. 5 G.4. c.64.

By § 8. All fish cured in any part of the U. K. of *G. B.* and *Ireland* are exempted and excepted from any duty of customs payable on goods, wares, and merchandize exported from *G. B.* or *Ireland;* any thing in any act or acts to the contrary notwithstanding.

Fish exempted from all duties on exportation.

By § 9. The 3000*l.* allowed under 48 *G.* 3. *c.* 110. for encouragement of *Scotch* fisheries, and the 5000*l.* allowed under 59 *G.* 3. *c.* 109. for the encouragement of the *Irish* coast fisheries, shall in future be applied in building piers and quays, at such places on the sea-coasts of *Scotland* and *Ireland* as shall appear to the commissioners of the fisheries respectively to be most fit and necessary, and to no other purpose; except only in providing materials for the repair of the boats of poor fishermen at such ports or places where piers or quays are or shall be built, not exceeding the amount of 500*l.* in any one year, in *Scotland* and *Ireland* respectively; any thing in the said recited acts to the contrary notwithstanding: Provided always, that no part of such respective sums shall be granted or allowed to any person or persons, by the said commissioners respectively, for the purpose of making, or building, or repairing of any such pier or quay, except in such cases where the said commissioners shall be satisfied that not less than one-fourth of the expences of building, making, or repairing of any such pier or quay respectively hath been advanced and expended by such person or persons.

§ 10. Contains the regulations for issuing such sums in *Scotland* and *Ireland* respectively.

IV. Of the Oyster-Fisheries.

31 G.3. c.51. Unlawfully fishing in any oyster fishery.

By stat. 31 *G.* 3. *c.* 51. If any person shall, with any net, traul, dredge, or other instrument or engine whatsoever, take or catch any oysters or oyster-brood, within the limits of any oyster-fishery of this kingdom, or shall dredge for oysters or oyster-brood, or use any oyster-dredge, or any net, instrument, or engine whatsoever within the limits of any such fishery, for the purpose of catching oysters or oyster-brood, although none be actually taken; or shall drag upon the ground of any such fishery with any net or other engine, every such person (other than the owners, lessees, or occupiers of such fishery, or persons lawfully entitled to catch oysters therein,) shall be deemed guilty of a misdemeanor, and shall and may be indicted for the same at the assizes or quarter sessions for the county or division; and the justices in sessions shall hear and determine all such offences: and every such offender being convicted by verdict, or on his own confession, shall be punished by fine and imprisonment, or either of them, as the court shall think proper; such fine not to exceed 20*l.* nor be less than 40*s.*; and such imprisonment not to be for more than three months, nor less than one month.

Offenders may be apprehended.

§ 3. Any justice, upon complaint on oath within 30 days of such offence having been committed, may by warrant cause such of-

31 G.3. c.51. fender to be brought before himself or any other justice acting for the county or division, who may commit him to the common gaol or other usual place of confinement for prisoners, until the next assizes or quarter sessions, whichever shall first happen, unless he enter into recognizance, with two sureties in 20*l.* each, to appear either at the said first assizes or general quarter sessions, which shall first happen, and there to answer to any indictment which may be preferred against him by virtue of this act.

Offenders refusing to tell their names. § 4. If any such person (except as aforesaid) shall be found as aforesaid, &c. within the limits of any oyster-fishery, and shall refuse to discover his real name and true place of abode or residence to the owner, lessee, or occupier of such fishery, or his apprentice or servant, he may seize, secure, and detain such person so found actually taking or catching, or dredging, or using as aforesaid, or with any net as aforesaid dragging as aforesaid, and refusing as aforesaid, and carry him before a justice, who on oath being made of the offence shall proceed against him in the same manner as if he had been apprehended and brought before him by virtue of a warrant.

Recognizances to prosecute. § 5. Provided, that no justice by this act shall commit any person, or require security from him for his appearance as aforesaid, unless one sufficient householder, being an owner, lessee, or occupier, or otherwise lawfully entitled to catch oysters in such fishery, (whose oath that he is such owner, &c. shall be sufficient evidence thereof,) shall enter into recognizance before the said justice in 20*l.* for his appearance at such next assizes or quarter sessions, and there to prefer and prosecute with effect a bill of indictment against such offender.

Offenders may be bailed. § 6. And if, after any such person shall have been committed, two sufficient sureties shall, before the justice by whom committed, enter into recognizance in 20*l.* each for the appearance of such person so committed at such next assizes or quarter sessions, which shall first happen, and to answer to any indictment which may be preferred against him under this act, such justice may by warrant order such person to be discharged from his commitment, and delivered out of custody.

Not to extend to floating fish. § 2. Provided, that nothing herein shall extend to hinder any person from catching or fishing for any floating fish in the waters or creeks within the limits of any oyster-fishery.

Nor to affect any former act. § 7, 8. Provided always, that this act shall not affect any act now in force respecting any particular oyster-fishery; or preclude any prosecution at the common law for any offence herein described: but no person shall be liable to have an action brought against him for any offence for which he shall have been punished by this act.

Where, however, a defendant was charged with *feloniously* stealing half a peck of oysters from a certain oyster-bed or laying, belonging to the prosecutor, where they were placed for the purpose of being fattened, *Hotham* B., who tried the case, appears to have ruled, after having consulted some of the other judges, that this stat. 31 *G.* 3. *c.* 51. having made the offence a misdemeanor only, had negatived the idea of a felony. *Rex* v. *Walford, Chelmsford Sum. Ass.* 1803. 5 *Esp.* 62.

48 G.3. c.144. Persons stealing By stat. 48 *G.* 3. *c.* 144. § 1. Reciting that whereas the provisions of the 31 *G.* 3. *c.* 51. have been found inadequate to the protection

of the oyster-fisheries of this kingdom; and doubts have arisen, since the passing of the said act, whether the taking oysters or oyster-brood from any oyster-bed or laying, or from any oyster-fishery, can under any circumstances be deemed felony, and punishable as such; it is enacted, that every person who shall at any time after the 1st of *August*, 1808, knowingly and wilfully steal, take, and carry away any oysters or oyster-brood from any oyster-bed, or oyster-laying, or oyster fishery, being the property of any person, or body politic or corporate, and sufficiently marked out as such, shall be deemed guilty of felony, and be transported for (not exceeding) seven years, or be imprisoned and kept to hard labour in any common gaol or house of correction, or penitentiary house, or imprisoned only for (not exceeding) three years, as the court before whom any such person shall be convicted may adjudge.

48 G.4. c.144. — Oysters or oyster brood from oyster beds, &c. shall be deemed guilty of felony.

But by § 2. Nothing in this act contained shall make liable any person to the penalties of this act who shall take or carry away any oyster or oyster-brood from any oyster-bed, oyster-laying, or oyster-fishery, wherein such person shall have or claim to have a right to take and carry away such oysters, or oyster-brood.

Act not to affect persons claiming a right to take away such oysters, &c.

And by § 3. Reciting that whereas doubts may arise in what parish or county any oyster-beds, layings, or fisheries are situated, and on that account difficulties may occur in bringing offenders to justice; it is further enacted, that it shall be sufficient in any indictment under this act, or under the said recited act to describe, either by name or otherwise, the bed, laying, or fishery in which the offence shall have been committed, without stating the same to be in any particular parish; and where the offence is committed on the border of any county, so as to make it difficult to ascertain the county, such offence may be stated to have been committed in the county in which the indictment shall be preferred, being either the county in which the offence was committed or the adjoining county.

Parish need not be stated in indictments, and where the county cannot be ascertained, the offence may be stated to be in the county where indictment is preferred.

And by § 4. It shall be lawful for justices for towns corporate, or other places not being counties of themselves, and having special or exclusive jurisdictions, to act in all cases arising within their respective jurisdictions in like manner as any justice of the peace for any county, riding, or division may act for such county, riding, or division, in the execution of the said recited act, or of any law for protecting the oyster-fisheries, and broods of oysters.

Justices for towns, &c. may act as justices for counties.

And by § 5. This act shall not repeal any of the provisions of the said stat. 31 *G.3. c.*51. except so far as the same respect the stealing and taking of oysters from any oyster-bed, laying or fishery.

Provisions of 31 G.3. c.51. not to be repealed by this act.

V. Rules concerning fishing in or near the Sea.

By stat. 9 *G.* 2. *c.*33. § 4. No person shall take, kill, or destroy any lobsters on the coast of *Scotland* from *June* 1 to *Sept.* 1., on pain of 5*l.*; to be recovered by any person who shall inform and sue for the same, on a summary complaint, before two justices of the shire on the coast where the offence shall be committed.

9 G 2. c. 33. Lobsters.

By stat. 3 *J. c.* 12. § 2. Every person who shall set up any new wear along the sea shore, or in any haven, harbour, or creek, or

3 J. c.12. Erecting a new wear.

3 J. c. 12. within five miles of the mouth of any haven or creek, shall, on conviction before one justice or mayor, forfeit for every offence 10*l.*, half to the king, and half to him that shall sue, to be levied by the constables or churchwardens by distress.

Spawn of sea fish. § 2. Every person who shall willingly take, destroy, or spoil any spawn, fry, or brood of any sea-fish, in any wear or other engine or device whatsoever, shall forfeit for every offence 10*l.* in like manner.

This provision appears to be confined to floating, and does not comprehend shell-fish.

Of oysters. *Bridger* q. t. v. *Richardson*, E. 1814. 2 *M.* & *S.* 568. Action, q. t. to recover a penalty of 10*l.* under this statute for willingly, with a certain engine called a dredge, taking in *Chichester* harbour three gallons of oyster fry and spat, the same being sea-fish, and then of a size unfit for food; 2d. count for a similar penalty, for willingly, with a certain other engine called a drag, taking 100 bushels of spawn, and 100 bushels of brood of sea-fish, to wit, of oysters, the same being sea-fish. At the trial, at *Sussex* Lent assizes, 1814, it was proved that the defendant, who was a *Colchester* fisherman, took the brood in question for the purpose of carrying them to *Colchester*, to be laid down there on private lands for further growth and maturity, and to make them marketable. The counsel for the defendant objected, 1st, that the taking must be with intent to destroy, the contrary of which was proved; 2dly, that the act of parliament applied only to floating fish; upon which a verdict was taken for the plaintiff for one penalty of 10*l.* on the second count, with liberty to the defendant to move for a nonsuit. Accordingly a rule was obtained for that purpose, and the court of K. B., after long and elaborate arguments by counsel on each side, held the case not to fall within the comprehension of the statute, for the taking could not be penal, when the object was to *preserve* and not to *destroy*.

Size of nets at sea. § 2. And every person who shall fish in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the sea, with any draw net, or drag net under three inches mesh, *viz.* 1½ inch from knot to knot (except for the taking of smoulds in *Norfolk* only,) or with any nets with canvas, or other engine or device, whereby the spawn, fry, or brood of sea-fish may be destroyed, shall in like manner forfeit such net, and also 10*s.* for every offence, half to the poor, and half to him that shall sue.

§ 3. But this act shall not extend to any net of lesser mesh only for taking herrings, pilchards, sprats, or lavidnian.

1 G. 1. st. 2. c. 18. By stat. 1 *G.* 1. *st.* 2. *c.* 18. and by a subsequent statute, if any person shall use at sea on the *English* coast any traul net, drag net, or set net for catching any fish (except herrings, pilchards, sprats, or lavidnian) which hath the mesh less than 3½ inches from knot to knot; or which hath a false or double bottom, cod, or pouch; or shall put any net upon or behind another, in order to catch or destroy the small fish which would have passed through any single net of 3½ inches mesh, he shall on conviction (after summons) before one justice where the offender resides or shall be found, on oath of two witnesses, in one month after the offence, forfeit the same, and also 20*l.*, half to the informer, and half to the poor; to be levied by distress; for want of sufficient distress, to be committed to gaol for twelve months; and the nets by warrant of such

justice to be burned. Persons aggrieved may appeal to the next sessions.

By § 7. If any person shall bring to shore, or expose to sale, or shall exchange for any other goods, matter, or thing, any fish less than the following sizes from the eyes to the extent of the tail, *viz.* bret or turbot 16 inches, brill or pearl 14, codling 12, 6, bass and mullet 12, sole 8, place or dab 8, flounder 7, he shall forfeit the fish to the poor, and also 20*s.*, half to the informer, and half to the poor; to be levied in the like manner; for default of payment or of sufficient distress, to be sent to the next house of correction, or other common gaol or prison of the county, city, town, or place, to be severely whipped and kept to hard labour six days, and not longer than 14. Persons aggrieved may appeal to the next sessions. The prosecution must be within one month. 1 G. 1. st. 2. c. 18. Size of sea fish.

But by stat. 33 *G.* 2. *c.* 27. § 11. Bret or turbot, brill or pearl, although under the said dimensions, may be exposed to sale, so as the same be not sold by retail for above 6*d.* a pound. And if any greater price shall be demanded or taken, or such fish shall not be weighed and measured, if required, the same shall be forfeited, and the offender shall also forfeit 20*s.*, to be recovered, mitigated, and applied as the penalties in the said act mentioned under the last head relating to the spawn of fish, and fish under size, and out of season; and the money paid shall be returned to the party who paid the same. 3

By stat. 42 *G.* 3. *c.* 22. § 4. After reciting that, whereas by 26 *G.* 3. *c.* 41. § 1. it is enacted, that before any vessel proceed on the *Whale Fishery*, oath shall be made by the owner and the master, or chief officer of the vessel, before the principal officers of the customs of the port from which such vessel intends to proceed, that it is really and truly their firm purpose and determined resolution that such vessel shall, as soon as licence shall be granted, forthwith proceed on a voyage to the *Greenland Seas*, or *Davis's Straits*, or the seas adjacent, and there in the approaching season use the utmost endeavours of themselves and ship's company to take whales or other creatures living in the sea, and on no other design or view of profit in such voyage, and to import the whale fins, oil, and blubber thereof into *G. B.*; in case of absence from illness or other unavoidable circumstances, such officers may accept an affidavit thereof, sworn by such owner or owners before any justice, in which affidavit shall be declared every matter and thing which by the said recited act such owner is required to declare. 42 G. 3. c. 22. Ships proceeding to the whale fishery.

VI. Importing Fish.

By stat. 18 *C.* 2. *c.* 2. If any ling, herring, cod, or pilchard, salmon, eels, or congers, taken by foreigners, shall be imported or exposed to sale; any person may seize the same, half for himself, and half for the poor. 18 C. 2. c. 2. May be seized.

And by stats. 1 *G.* 1. *st.* 2. *c.* 18. and 9 *G.* 2. *c.* 33. No fish taken by or received of any foreigner, except protestants inhabiting in *England*, shall be imported (except eels, stock fish, anchovies, sturgeon, botarge, or cavear, lobster and turbot,) on pain of 100*l.* and the master of the vessel 50*l.*; half to the poor, and half to the informer who shall sue in 12 months in any of the courts at *Westminster*. 1 G. 1. st. 2. 9 G. 2. c. 33. Penalty 100*l.*

London &c. fishmarkets.

The fish markets in *London* and *Westminster* are regulated by the statutes of 22 *G*. 2. *c*. 49., 29 *G*. 2. *c*. 39., 33 G. 2. *c*. 27., 2 *G*. 3. *c*. 15., and 42 *G*. 3. *c* 19., which are not of sufficient general interest to be here inserted. See *Tyrwh*. and *Tynd*. Digest of the Statutes, tit. Fishmarket (*London*) (*Westminster*.)

A.

A. Information for stealing fish from a pond in an inclosed park, &c. on stat. 5 G. 3. *c*. 14. § 1. ante, p. 423.

County of ——— } to wit *BE it remembered, that on the* ——— *day of* ——— *in the year of our Lord* 182– *at* ——— *in the said county of* ——— A. I. *of* ——— *in the said county, esquire, cometh before me* I. O. *clerk, one of his majesty's justices of the peace, acting in and for the said county, and upon oath maketh complaint, that* A. O. *late of* ——— *in the said county, labourer, within six calendar months now last past, to wit, on &c. at the parish of* ——— *in the county of* ——— *aforesaid, unlawfully did enter into a certain park (or paddock) then and there fenced in and enclosed called* G. *park of and belonging to him the said* A. I. (*or into a certain "garden," "orchard," or "yard" "adjoining" or "belonging" to a certain dwelling-house*) *of and belonging to him the said* A. I. *esquire*, (as the fact may be) *in which said park there then was a certain pond of water, and then and there, to wit, on the said* ——— *day of &c. at, &c. did steal, take, kill, destroy, and carry away certain fish, to wit,* 24 *fish called tench,* 24 *fish called perch,* 24 *fish called carp, of the value of* 24 s. *of the said* A. I., *then and there being, and then and there bred, kept, and preserved in such pond of water as aforesaid, without the consent of him the said* A. I., *then and there being the owner of the said pond and fish, against the form of the statute in such case made and provided. And thereupon the said* A. I *prayeth, &c.*

B.

B. Warrant to apprehend on the above information.

[*Commencement* and *Conclusion* to be in the common form.] *Charge* as stated in the Information.

C.

C. Commitment for a misdemeanor in stealing fish from a pond in an inclosed park, &c. on stat. 5 G. 3. *c*. 14. § 1. ante, p. 423.

[Commencement to be in the common form; see title Commitment, Vol. I. and then proceed thus:]

A. O. *charged upon the oaths of* A. I. *and* A. W. *with entering into a certain park* (or, as the case may be) *called* G. *park, situate in the parish of* ——— *in the county of* ——— *aforesaid, of and belonging to the said* A. I. *and stealing, taking, killing, destroying, and carrying away certain fish, to wit,* 24 *carp, &c. of the value of* 24 s. *belonging to the said* A. I. *in a certain pond of water in the*

said park then and there being, wherein the said fish had been bred, and were then kept and preserved, without the consent of the said A. I. *the owner thereof, contrary to the form of the statute in such case made and provided.*

[Conclusion "*Him safely to keep until he be delivered from your custody by due course of law.*"]

D. Information on oath before a justice for fishing in a river without consent of the owner of the fishery, on stat. 5 Geo. 3. *c.* 14. § 3. ante, p. 424. and stat. 3 G. 4. *c.* 23. Vol. I. tit. Conviction. From Paley, [36]. D.

West Riding of Yorkshire, *to wit.* } *BE it remembered, that on the fifteenth day of* November, *in the year of our Lord one thousand eight hundred and twelve, at* Gisburn, *in the* West Riding of the county of York, Edward Marton, of Great Mitton, in the said riding, labourer, *on behalf and at the instance of* Jane Clark, widow, *the owner of the fishery of a part of the river Ribble, which runneth in the lands of the said* Jane Clark, *in the* township of Waddington, *in the said* riding, *personally came before me, the* Reverend Thomas Collins, doctor in divinity, *one of his majesty's justices of the peace for the said* riding, *and upon oath to him by me then administered upon the holy gospels of God, and informed me that* James Winckley, *of* Great Mitton *in the county aforesaid,* labourer, *on the first day of November instant at the township of Waddington in the said riding did attempt to take, kill, and destroy the fish in that part of the said river* Ribble, *which runneth in the said lands of the said* Jane Clark, *in the township of* Waddington *aforesaid, in the riding aforesaid, without her authority, and without and against her consent, contrary to the form of the statute in such case made and provided, she, the said* Jane Clark, *being then and there owner of the said part of the said river, and of the fishery of the same; and he the said* James Winckley, *not then, and there having any just right, or any just, reasonable, or probable claim, or cause, to kill, carry away, or destroy any of the fish in that part of the said river, or to attempt to take, kill, or destroy any fish in that part of the said river, and the said part of the said river, wherein the said fish were so attempted to be taken, killed, and destroyed by the said* James Winckley, *as aforesaid, not then being in any park or paddock or in any garden, orchard, or yard adjoining or belonging to any dwelling-house, but then being in other inclosed ground, then being the private property of the said* Jane Clark, *at the* Township *of* Waddington *aforesaid, in the* West Riding *aforesaid; whereby and by force of the statute in that case made and provided, he the said* James Winckley *hath forfeited for his said offence the sum of five pounds to the said* Jane Clark, *the owner of the fishery aforesaid, whereupon the said* Edward Marton, *on behalf and at the instance of the said* Jane Clark, *the owner of the fishery aforesaid, prayeth the judgment of me, the said justice in the said premises, and that the said* James Winckley *may be forthwith apprehended, and brought before me to answer the said complaint.*

Exhibited and sworn at Gisburn aforesaid,
the 16*th day of November*, 1812. T. C.

E. E. Warrant on the preceding information to bring the defendant to answer the charge, pursuant to § 3. of the statute, ante, p. 424.

West Riding of Yorkshire, *to wit.* } *To the constables of* Waddington, *in the said* Riding, *and also to A. B.*

WHEREAS information and complaint on oath have been made on behalf and at the instance of Jane Clark, *widow, the owner of the fishery of a part of the river* Ribble, *which runneth in the lands of the said* Jane Clark, *in the* township *of* Waddington *in the said riding, before me* Thomas Collins, doctor in divinity, *one of his majesty's justices of the peace, in and for the said riding, that on Sunday, &c.* (as in the information verbatim to the words, "*at the* township *of* Waddington *aforesaid, in the* West Riding *aforesaid,*" inclusive).

These are therefore to require you to apprehend the said James Winckley, *and bring him before me the justice aforesaid, to answer the said complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the* 16*th day of November, in the year of our Lord* 1812. T. C.

F. F. Conviction (on the above information) on stat. 5 *G.* 3. *c.* 14. and on stat. 3 *G.* 4. *c.* 23. Vol. I. tit. Conviction, below, for attempting to kill fish in a private river, without the consent of the owner. From Paley, [38].

Information on behalf of the owner.

West Riding, Yorkshire, to wit. } *BE it remembered, that on the sixteenth day of* November, *one thousand eight hundred and twelve, at* Gisburn *in the* West Riding *of the* county *of* York, Edward Marton, *of* Great Mitton, *in the said* riding, *labourer, on behalf and at the instance of* Jane Clark, *widow, the owner of the fishery of a part of the river* Ribble, *which runneth in the lands of the said* Jane Clark *in the* township *of* Waddington *in the said* riding, *personally came before me the* Reverend Thomas Collins, doctor in divinity, *one of his majesty's justices of the peace for the said* West Riding, *and upon oath to him by me then administered upon the holy gospel of God, informed me that* James Winckley *of* Great Mitton *aforesaid, in the* riding *aforesaid, labourer, on* Sunday, *the* 1*st day of* November *instant, at the* township *of* Waddington *aforesaid, in the riding aforesaid, did attempt to take, kill, and destroy the fish in that part of the said river* Ribble, *which runneth in the said lands of the said* Jane Clark, *in the* township *of* Waddington, *aforesaid, in the riding aforesaid, without her authority, and without and against her consent, contrary to the form of the statute in that case made and provided, she the said* Jane Clark *being then and there owner of the said part of the said river; and the said* James Winckley *not then and there having any just right, or any just, reasonable, or probable claim or cause, to take, kill, carry away, or destroy any of the fish in that part of the said river, or to attempt to take, kill, or destroy any fish in that part of the said river wherein the said fish were so attempted to be taken,*

Complaint on oath.

killed, and destroyed by the said James Winckley *as aforesaid, not then being in any park or paddock, or in any orchard, garden, or yard adjoining or belonging to any dwelling-house, but then being in other inclosed ground, then being the private property of the said* Jane Clark, *at the* township *of* Waddington *aforesaid, in the* West Riding *aforesaid, contrary to the form of the statute in such case made and provided, and whereby the said* James Winckley *hath forfeited for his said offence the sum of 5l. to the said* Jane Clark, *the owner of the fishery aforesaid; whereupon he the said* James Winckley *being by virtue of my warrant brought before me the justice aforesaid, on the eighteenth day of November, in the year aforesaid at* Gisburn *aforesaid in the* riding *aforesaid, and having heard the charge contained in the said information, declared he was not guilty of the said offence. Whereupon I, the said justice, did proceed to examine into the truth of the charge contained in the said information, and on the said eighteenth day of* November *in the year aforesaid, at the parish of* Gisburn *aforesaid, in the* riding *aforesaid, one credible witness, to wit* John Sanderson *of* Boulton, *in* Bolland, *in the* riding *aforesaid, yeoman, upon his oath deposeth, and saith, in the presence of the said* James Winckley, (See 1 East, 648.) *on his oath, that within one month next before the said information was made before me the said justice by the said* Edward Marton, *to wit, on the first day of* November *instant, in the year aforesaid, he the said* John Sanderson *saw the said* James Winckley *at the* township *of* Waddington *aforesaid in the* riding *aforesaid attempt, to take, kill, and destroy the fish in that part of the river* Ribble, *which runneth in the lands of the said* Jane Clark, *in the township of* Waddington, *in the* West Riding *of the* County *of* York, *and that the said part of the said river was not then nor is in any park or paddock, or in any garden, orchard, or yard adjoining or belonging to any dwelling-house, but then was and is in other inclosed ground then and there being the private property of the said* Jane Clark, *at the* township *of* Waddington *aforesaid, in the* riding *aforesaid; and that the said* Jane Clark *then and there was and is the true and lawful owner of the fishery of the said part of the said river: And thereupon he the said* James Winckley *having heard the said evidence so given against him as aforesaid, is asked by me if he has any thing to say or prove in answer to such evidence, or to shew why he should not be convicted of the offence above charged upon him in form aforesaid; and because the said* James Winckley *doth not nor can say or prove any thing in his own defence touching or concerning the offence so charged upon him as aforesaid, or shew why he should not be convicted of the same offence; and inasmuch as the said* James Winckley *has not proved or offered any evidence to prove, nor hath alleged that he had the authority or consent of the said* Jane Clark, *or of any owner of the said fishery, to take, kill, carry away, or destroy, or to attempt to take, kill, or destroy any fish in the fishery aforesaid, or any just right, or any just, reasonable, or probable claim or cause, or any right or claim whatsoever so to do. Therefore it manifestly appearing to me that he the said* James Winckley *is guilty of the offence charged upon him in the said information; I do hereby convict him of the offence aforesaid, and do declare and adjudge, that, he the said* James Winckley *hath forfeited the sum of five pounds of lawful money of* Great Britain, *for the offence aforesaid, to be paid to the said* Jane Clark, *the owner of the fishery of the said part of the said river so*

Defendant apprehended by warrant.

Plea not guilty.

Evidence.

Judgment.

running as aforesaid, according to the form of the statute in that case made and provided. Given under my hand and seal at Gisburn *aforesaid, in the riding aforesaid, the eighteenth day of* November, *in the year of our Lord one thousand eight hundred and twelve.*

T. C. (L. S.)

G. G. Information against a person for preventing the young Salmon from going down a River.—*From Y. C. P.* 90, *et seq.*

[Stat. 58 Geo. 3. *c.* 43. § 3. 6. 10. 13. *ante,* p. 433, 5, 6, 7, 8.]

County of } ——— } *THE information and complaint of* A. I. *of* ———, *in the said county, one of the conservators appointed for the preservation of the salmon and fish of the salmon kind, and the brood, spawn, and fry thereof, within the rivers* ——— *and* ———, *in the said county, made before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———: *Who says, that within six months last past, at a place called* ———, *in a part of the said river* ———, *in the parish of* ———, *in the said county, one* A. O., *of* ———, *in the said county,* ———, *did lay down and place, set and erect, certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn, or small fry of salmon in the said river, which said bars so laid down, placed, set up and erected, acted and act as a bank, dam, or hedge, so that the young fry or young salmon were and are thereby prevented from going down from the said river to the sea, contrary to an act passed in the 58th year of the reign of king* George *the third, intituled* "An act for preventing the destruction of the breed of salmon, and fish of salmon kind, in the rivers of *England:*" *Whereby he the said* A. O. *has forfeited the sum of* 10*l*., *to be distributed as the said act directs; and therefore he the said* A. I. *prays that justice may be done in the premises.*

Before me, A. I.

J. P.

H. H. Summons thereupon.

To the constable of ———.

County of } ——— } *WHEREAS information and complaint have been made before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county, by* A. I. *of* ———, *in the said county, one of the conservators appointed for the preservation of the salmon, and fish of the salmon kind, and the brood, spawn, and fry thereof, within the rivers* ——— *and* ———, *in the said county, that within six months last past, at a place called* ———, *in a part of the said river* ———, *in the parish of* ———, *in the said county, one* A. O. *of* ———, *in the said county* ———, *did lay down and place, set and erect, certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn,*

or small fry of salmon in the said river, which said bars so laid down, placed, set up, and erected, acted and act as a bank, dam, or hedge, so that the young fry or young salmon were and are thereby prevented from going down from the said river to the sea, contrary to an act passed in the 58th year of the reign of king George *the third, intituled* " An act for preventing the destruction of the breed of salmon, and fish of salmon kind, in the rivers of *England:" Whereby he the said* A. O. *has forfeited the sum of* 10*l.*, *to be distributed as the said act directs: These are therefore to require you forthwith to summon the said* A. O. *to appear before me at* ———, *in the said county, on the* ——— *day of* ———, *next, at the hour of* —— *in the forenoon, to answer to the said information and complaint, and to be further dealt with according to law. And be you then there to certify what you shall have done in the execution thereof. Herein fail not. Given under my hand and seal this* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ——.

[For the form of Conviction given by the stat. see *ante*, p. 436.]

I. Recognizance in case of Appeal. I.

[Stat. 58 G. 3. c. 43. § 12. — *ante*, 437.]

County of } *BE it remembered, that on the* —— *day of* ———
——— } *in* ——— *year of the reign of our sovereign lord* George *the fourth, of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* A. O. *of* ———, *in the said county,* ———, *personally came before me,* J. P. *esquire, one of his majesty's justices of the peace, for the said county, and acknowledged himself to owe to our said lord the king the sum of twenty pounds, to be levied of his goods and chattels lands and tenements, to the use of our said lord the king, his heirs and successors if default shall be made in the condition following:—*

Whereas the above bound A. O. *has been this day* [or, *was on the* —— *day of* ——— *last*, as the case may be,] *upon the complaint of* A. I. *of* ———, *in the said county, one of the conservators appointed for the preservation of the salmon, and fish of the salmon kind, and the brood, spawn, and fry thereof, within the rivers* ——— *and* ———, *in the said county, convicted before me in pursuance of an act passed in the 58th year of the reign of king* George *the third, intituled* " An act for preventing the destruction of the breed of salmon, and fish of salmon kind, in the rivers of *England;" for that the said* A. O. *within six calendar months last past, at a place called* ———, *in a part of the river* ———, *in the parish of* ———, *in the said county, did lay down and place, set and erect, certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn, or small fry of salmon in the said river, which said bars so laid down, placed, set up and erected, acted and act as a bank, dam, or hedge, so that the young fry or young salmon were and are thereby prevented from going down from the said river to the sea, and was adjudged by me to pay and forfeit for the said offence the sum of*

—— *of lawful money of* Great Britain, *together with the further sum of* ——*for costs of suit and prosecution, to the said* A. I.

And whereas the said A. O. *has given notice of his intention to appeal to the next general quarter-sessions of the peace for the said county, against the said conviction: The condition of this recognizance is such, that if the said* A. O. *shall appear and try such appeal at the said next general quarter-sessions of the peace, and likewise pay the costs of such appeal in case judgment and sentence shall upon the hearing thereof be given against him the said* A. O. *within ten days next after the determination thereof, then this recognizance shall be void.*

Acknowledged before me,

J. P.

K. K. Warrant of Distress thereupon.— *Y. C. P.* 94.

[Stat. 58 Geo. 3. c. 43. § 6.—*ante*, p. 435.]

County of ——— } To the constable of ———.

WHEREAS A. O. *of* ———, *in the said county* ———, *is this day duly convicted before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W., *a credible witness, for that he the said* A. O., *within six months last past, at a place called* ————, *in a part of the river* ———, *in the parish of* ————, *in the said county did lay down and place, set and erect certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn, or small fry of salmon in the said river, which said bars so laid down, placed, set up and erected, acted and act as a bank, dam, or hedge, so that the young fry or young salmon were and are thereby prevented from going down from the said river to the sea, contrary to an act passed in the 58th year of the reign of king* George *the third, intituled* "An act for preventing the destruction of the breed of salmon, and fish of salmon kind, in the rivers of *England*:" *Whereby he the said* A. O. *has forfeited the sum of* ——*l.* [if mitigated say, *but which I have mitigated to* —*l., this being the first offence, or* as the case may be,] *to be distributed as hereinafter is mentioned according to the directions of the said act,* [if the defendant be present say, *and which he the said* A. O. *being now present has not paid down immediately upon such conviction upon the order of me, the said justice, but has refused to pay the same*:] *These are therefore to require you to levy the said penalty of* ——*l., and also the further sum of* ——*l., which I have adjudged for costs, by distress of the goods and chattels of him the said* A. O., *and if within the space of four days next after such distress by you taken, the said penalty of* ——*l., and the said further sum of* ——*l., for costs, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid, and out of the money arising by such sale that you do pay one moiety of the said penalty, together with the said sum of* ——*l. for costs, to* A. I. *of* ———, *in the said county, one of the conservators appointed for the preservation of the salmon, and fish of the salmon kind, and the brood, spawn, and fry thereof, within the*

rivers ——— and ———, in the said county, who informed me of the said offence, and the other moiety of the said penalty, after defraying all costs, charges, and expenses attending the prosecution, and the levying and recovering of the penalty, to the overseers of the poor of the parish of ——— aforesaid, where the said offence was committed, returning to him the said A. O.*, on demand, the overplus of the money levied* [if any there be,] *after the penalty, and all costs, charges, and expenses attending the levying and recovering thereof are deducted; and in case sufficient distress shall not be found of the goods and chattels of the said* A. O.*, that you certify the same to me together with the return of this precept. Given under my hand and seal the —— day of ——— in the year of our Lord one thousand eight hundred and ———.*

L. Commitment thereupon.—*Y. C. P.* 96. L.

[Stat. 58 Geo. 3. c. 43. § 6.—*ante*, 435.]

County of ——— { To the constable of ———, in the said county, and to the keeper of the house of correction at ———, in the said county.

WHEREAS A. O. *of ———, in the said county ———, was on the present day* [that is, if he be present when the conviction takes place, and refuses to pay down the penalty immediately, since he may be instantly committed in that case; or if absent, and a return being made of *nulla bona*, say, *was on the —— day of ——— instant,*] *duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W.*, a credible witness, for that he the said* A. O.*, within six months last past, at a place called ———, in a part of the river ———, in the parish of ———, in the said county, did lay down and place, set up and erect certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn, or small fry of salmon in the said river, which said bars so laid down, placed, set up and erected, acted and act as a bank, dam, or hedge, so that the young fry or young salmon were and are thereby prevented from going down from the said river to the sea, contrary to an act passed in the 58th year of the reign of king* George *the third, intituled* "An act for preventing the destruction of the breed of salmon, and fish of salmon kind, in the rivers of *England*:" *Whereby he the said* A. O. *has forfeited the sum of ———l., to be paid, one moiety thereof to* A. I. *of ———, in the said county, one of the conservators appointed for the preservation of the salmon, and fish of the salmon kind, and the brood, spawn, and fry thereof within the rivers —— and ———, in the said county, who informed me of the said offence, and the other moiety of the said penalty, after defraying all costs, charges, and expenses attending the prosecution, and the levying and recovering of the penalty, to the overseers of the poor of the said parish of ———, where the said offence was committed, for the use of the poor there,* [if the penalty be mitigated, say, *which I have mitigated to ———l.,*] [or, as the case may be; and if the offender be present at the conviction, and the warrant of distress

issues immediately, the following clause, in Black Letter, is then to be omitted:] And whereas on the said ——— day of ——— in the year aforesaid, I did issue my warrant to the constable of ——— to levy the said penalty by distress of the goods and chattels of him the said A. O., and to distribute the same according as is directed by the said statute: And whereas it duly appears to me, as well on the oath of the said constable of ——— as otherwise, that he the said constable has used his best endeavours to levy the said penalty on the goods and chattels of the said A. O. as aforesaid, but that no sufficient distress can be found whereon to levy the same: *These are therefore to require you the said constable of ——— aforesaid, to take and convey the said* A. O. *to the said house of correction of the said county, and deliver him to the said keeper thereof, together with this precept. And you the said keeper are hereby commanded to receive into your custody in the said house of correction the said* A. O., *and him there safely to keep at hard labour, and without bail or mainprize for the space of* ———, [this must depend upon the offence being the first, second, or third, as stated in the latter part of the *sixth* section of stat. 58 *Geo.* 3. *c.* 43. — *ante*, p. 436.] *unless the said penalty be sooner paid. And for your so doing, this shall be your sufficient warrant Given under my hand and seal, the ——— day of ——— in the year of our Lord one thousand eight hundred and* ———.

Flight. *See* Forfeiture.

Forcible Entry and Detainer.

FORCE, in the common law, is most commonly taken in ill part, for unlawful violence; for *maximè paci sunt contraria vis et injuria.* 1 *Inst.* 161. *b.*

It seems that at the common law (1 *Haw. c.* 64. § 1. *et vide Anon.* 3 *Salk.* 169.) a man disseised of any lands or tenements, (if he could not prevail by fair means,) might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time: And it seems certain that even at this day he who is wrongfully dispossessed of his *goods* may justify the re-taking of them by force from the wrong-doer, if he refuse to re-deliver them; for the violence which happens through the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought. Perhaps, however, as Lord *Kenyon* observed, (*R.* v. *Wilson and others,* 8 *T. R.* 364.) some doubt may arise respecting what Mr. Serjt. *Hawkins* says, that at common law the party may enter with force into that to which he has a legal title. But without giving any opinion concerning that *dictum* one way or the other, but leaving it to be proved or disproved whenever that question should arise; all that the court wished to say was, that their opinion in the principal case left that question untouched, it appearing by the indictment there (which was at common law) that the defendants "unlawfully" entered, and therefore the court could not intend that they had any title.

But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men, under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions; it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice. 1 *Haw.* *c.*64. § 2.

However, even at this day, in an action of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any enquiry concerning the force, for howsoever he may be punishable *at the king's suit,* for doing what is prohibited by statute, as a contemner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself. 1 *Haw.* 64. § 3.

Yet still forcible entry and detainer are offences at the common law; and the prosecutor, if he please, may proceed in that way: but then the indictment ought to express not only the common technical words *with force and arms,* but also such circumstances as thereby it may appear upon the face of the indictment to be more than a common trespass; for a man cannot be indicted for a bare trespass. *Vide* 3 *Burr.* 1698—1731. 8 *T. R.* 357. *post,* p. 463.

Indeed there is no doubt but that the offence of forcible entry is indictable at common law, though the statutes give other remedies to the party aggrieved, restitution and damages; and therefore in an indictment on the statutes it is necessary to state the interest of the prosecutor; but I do not know, said Lord *Kenyon* Ch. J., that it has ever been decided that it is necessary to allege a greater degree of force in an indictment at common law for a forcible entry than in an indictment on the statutes. Therefore an indictment at common law, charging the defendants with having "unlawfully and with a strong hand" entered the prosecutor's mill, and certain lands and houses, and expelled him from the possession, is good: for the words, "with a strong hand," mean something more than a common trespass. *Per Ld. Kenyon* C. J. *R.* v. *Wilson,* 8 *T. R.* 357.

8 H. 6. c. 9. Persons having been in possession three years.

But the safest and most usual way is to proceed upon the statutes; and therefore, (after having premised that by stat. 8 *H.* 6. *c.* 9. § 7. *they which keep their possessions with force in any lands and tenements, whereof they or their ancestors, or they whose estate they have in such lands and tenements, have continued their possession in the same by three years or more, be not endangered by force of this statute,*) I shall consider those several statutes, with the interpretation that that hath been put upon them, under the following heads: 1 *Haw. c.* 64. § 13.

I. *What is a forcible entry.*
II. *What is a forcible detainer.*
III. *How the same are punishable by action at law.*
IV. *How punishable at the general sessions.*
V. *How punishable by one justice.*
VI. *How punishable on a* certiorari.
VII. *How punishable as a riot.*

I. What is a forcible Entry.

A forcible entry or detainer is committed by violently taking or keeping possession of lands and tenements with menaces, force, and arms, and without the authority of law. 4 *Blac. Com.* 148.

5 R. 2. c. 8. 15 R. 2. c. 2. 8 H. 6. c. 9.

By stat. 5 *R.* 2. *c.* 8. None shall make any entry into any lands or tenements (or benefice of holy church, 15 *R.* 2. *c.* 2. or other possessions, 8 *H.* 6. *c.* 9. § 2.) but in cases where entry is given by the law; and in such cases not with strong hand, nor with multitude of people, but only in peaceable and easy manner, on pain of imprisonment and ransom at the king's will.

Or other possessions] It seems clear that no one can come within the danger of these statutes, by a violence offered to another in respect of a *way*, or such like easement, which is no possession, and there seems to be no good authority that an indictment will lie on this case for a *common* or *office*. 1 *Haw.* *c.* 64. § 34.

Not with strong hand, nor with multitude of people] It seems certain that if one who pretends a title to lands barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for such like purpose, without doing any act, which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry thereinto. 1 *Haw.* *c.* 64. § 20.

Trespass.

But it seemeth that if a person enter into another man's house or ground, either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear, though it be but to cut or take away another man's corn, grass, or other goods, or to fell or crop wood, or to do any other like trespass, and though he do not put the party out of his possession, yet it seemeth to be a forcible entry. *Dalt.* *c.* 126. p. 294.

But if the entry were peaceable, and after such entry made, they cut or take away any other man's corn, grass, wood, or other goods, without apparent violence or force; though such acts are counted a disseisin with force, yet they are not punishable as forcible entries. *Dalt.* *c.* 126. p. 294.

But if he enter peaceably, and there shall by force or violence cut or take away any corn, grass, or wood, or shall forcibly or wrongfully carry away any other goods there being, this seemeth to be a forcible entry punishable by the statutes. *Ibid.*

So also shall those be guilty of a forcible entry, who having an estate in land by a defeasible title continue with force in the possession thereof, after a claim made by one who had a right of entry thereto. 1 *Haw.* *c.* 64. § 23.

But he who barely agrees to a forcible entry made to his use, without his knowledge or privity, shall not be adjudged to make an entry within the statutes, because he no way concurred in or promoted the force. 1 *Haw.* *c.* 64. § 24.

And, in general, it seemeth clear that to denominate the entry forcible, it ought to be accompanied with some circumstances of actual *violence* or *terror*; and therefore that an entry which hath no other force than such as is implied by the law, in every

trespass whatsoever, is not within these statutes. 1 *Haw. c.* 64. § 25.

R v. *Wilson, and eleven others,* 8 *T. R.* 357. The defendants were indicted for a forcible entry and detainer at common law. The first count stated, that they with force and arms *unlawfully* and injuriously, *and with a strong hand,* entered, &c. &c. The third count was the same as the first, in *those words;* the second and fourth, the same as first and third, excepting that they omitted the words *with a strong hand.* There was a demurrer to all these counts; and in support of the demurrer, it was contended that a *private trespass* only was charged upon the face of the indictment, and not a public breach of the peace indictable. Against the demurrer, it was admitted that the second and fourth counts were not maintainable. And by the Court these points were determined; Ld *Kenyon* C. J., *Grose* J., *Lawrence* J., *Le Blanc* J. Strong hand.

A mere trespass, which is the subject of a civil action, and where the words *vi et armis* are a matter of form, cannot be converted into an indictable offence;

That the offence of forcible entry is indictable at common law;

In an indictment on the statutes, it is necessary to state the interest of the prosecutor;

It is sufficient to state the same degree of force in an indictment at common law, and in an indictment upon the statutes; but there must be stated that degree of force and violence in fact which constitutes the offence;

The words *manu forti* mean something more than a common trespass;

It is not sufficient to charge the defendant with having entered *vi et armis.*

No particular technical words are necessary in such an indictment at common law; all that is required is, that it should appear by the indictment that such force and violence have been used as constitute a public breach of the peace.

And the first and third counts were adjudged good. And at another day Lord *Kenyon* C. J. added, that the court desired that their decision might not be considered as a precedent in other cases to which it did not apply. And that what *Hawkins* says, (ante, p. 460., that at common law the party may enter with force into that to which he has a legal title, was left untouched by this case, for that here the indictment stated the defendants to have *unlawfully* entered, and therefore the court could not intend that they had any title.

As to the matter of *violence;* it seems to be agreed that an entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in or not, especially if it be a dwelling-house, and perhaps also by an act of outrage after the entry, as by carrying away the party's goods; but it seems that an entry is not forcible by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *strong hand,* or *multitude of people;* and it hath been holden that an entry into a house through a window, or by opening a door with a key, is not forcible. 1 *Haw. C.* 64. § 26. Violence.

Terror. In respect of the circumstances of *terror;* it is to be observed, that whenever a man, either by his behaviour or speech at the time of his entry, gives those who are in possession just cause to fear that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible; whether he cause such a terror by carrying with him such an unusual number of attendants, or by arming himself in such a manner as plainly intimates a design, or by actually threatening, to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force, as if one say that he will keep his possession in spite of all men, or the like. 1 *Haw. c.* 64. § 27.

But it seems that no entry shall be judged forcible from any threatening to spoil another's *goods,* or to destroy his cattle, or to do him any other such like damage which is not personal. 1 *Haw. c.* 64. § 28.

However, it is clear that it may be committed by a single person, as well as by twenty. 1 *Haw. c.* 64. § 29.

But nevertheless all those who accompany a man, when he makes a forcible entry, shall be judged to enter with him, whether they actually come upon the lands or not.

II. What is a forcible Detainer.

It seemeth certain that the same circumstances of violence or terror, which will make an entry forcible, will make a detainer forcible also. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw. c.* 64. § 30.

III. How they are punishable by Action at Law.

8 H.6. c.9. By stat. 8 *H.* 6. *c.* 9. § 6. If any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably and after holden out with strong hand, the party grieved shall have assize of novel disseisin, or writ of trespass against the disseisor; and if he recover, he shall have treble damages, and the defendant moreover shall make fine and ransom to the king.

The party aggrieved shall have assize, &c.] But this action, being at the suit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entereth with force, where his entry is lawful, he shall not be punished by way of action; but yet he may be indicted upon the statute, for the indictment is for the force and for the king; and he shall make fine to the king, although his right be never so good. *Dalt. c.* 129. p. 303.

Treble damages] And this he shall recover as well for the mesne occupation as for the first entry: and albeit he shall recover treble damages, yet he shall recover costs, which shall be trebled also: for the word *damages* includeth costs of suit. 1 *Inst.* 257.

IV. How punishable at the General Sessions.

The party grieved, if he will lose the benefit of his treble damages and costs, may be aided and have the assistance of the

justices at the general sessions, by way of indictment (A) on the statute of 8 *H*.6.; which being found there, he shall be restored to his possession, by a writ of restitution granted out of the same court to the sheriff. *Dalt*. *c*. 129. p. 303. A.

In the caption of which indictment, it will be sufficient to say *justices assigned to keep the peace of our lord the king*, without shewing that they have authority to hear and determine felonies and trespasses; for the statute enables all justices of the peace, as such, to take such indictments. 1 *Haw*. *c*. 64. § 36.

And the tenement in which the force was made must be described with convenient certainty; and the indictment must set forth that the defendant actually entered, and ousted the party grieved; and continueth his possession at the time of finding the indictment; otherwise he cannot have restitution, because it doth not appear that he needeth it. 1 *Haw*. *c*. 64. § 37. *et seq*.

But if a man's wife, children, or servants, do continue in the house or upon the land, he is not ousted of his possession; but his cattle being upon the ground, do not preserve his possession. *Dalt*. *c*. 132. p. 307.

An indictment for forcible entry was quashed, for not setting forth that the party was seised or disseised, or what estate he had in the tenement: for if he had only a term for years, then the entry must be laid, into the freehold of *A*. in the possession of *B*. We need scarcely observe that this respects an indictment on the statutes. *R*. v. *Griffith*, 3 *Salk*. 169. 3 *Burr*. 1732.

V. How punishable by one Justice.

By stat. 8 *H*. 6. *c*. 9. for a more speedy remedy, the party grieved may complain to any one justice, or to a mayor, sheriff, or bailiff, within their liberties. 8 H. 6. c. 9.

But although one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his asistance one or two more justices.

Concerning which power of one justice it is enacted as follows:

After complaint made to such justice, by the party grieved, of a forcible entry made into lands, tenements, or other possessions, or forcible holding thereof, he shall within a convenient time, at the costs of the party grieved, (without any examining or standing upon the right or title of either party), *take sufficient power of the county and go to the place where such force is made*. *Dalt*. *c*. 44. p. 96. See stats. 15 *R*. 2. *c*. 2. 8 *H*. 6. *c*. 9. § 2.

Complaint ——— by the party grieved.] Yet these words do not enforce any necessity of such a complaint; for it is holden that the justice may and ought to proceed, upon any information or knowledge thereof whatsoever, though no complaint at all be brought unto him by any party grieved thereby. *Lamb*. 147.

Power of the county.] All people of the county, as well the sheriff as other, shall be attendant on the justices to arrest the offenders; on pain of imprisonment and fine to the king. 15 R. 2. c. 2.

If the doors be shut, and they within the house shall deny the justice to enter, it seems he may break open the house, to remove the force. *Dalt*. *c*. 44. p. 96.

15 R.2. c.2. 8 H.6. c.9. And if after such entry made the justice *shall find such force, he shall cause the offenders to be arrested.*

He shall also take away their weapons and armour, and cause them to be appraised, and after to be answered to the king as forfeited, or the value thereof. *Dalt. c.* 44. p. 96.

B. Also such justice ought to *make a record* (B) *of such force by him viewed;* which record shall be a sufficient conviction of the offenders, and the parties shall not be allowed to traverse it: And this record, being made out of the sessions by a particular justice, may be kept by him; or he may make it indented, and certify the one part into the K. B., or leave it with the clerk of the peace, and the other part he may keep himself. For this view of the force by the justice, being a judge of record, maketh his record thereof, in the judgment of the law, as strong and effectual, as if the offenders had confessed the force before him; and touching the restraining of traverse, more effectual than if the force had been found by a jury, upon the evidence of others. (This is as to the fine and imprisonment, but not as to restitution.) *Dalt. c.* 44. p. 96.

15 R.2. c.2. C. And the offenders being arrested (as before is said) *shall be put in the next gaol* (C), *there to abide convict by the record of the same justice until they have made fine and ransom to the king.*

Shall be put in the next gaol.] It is said that the justice hath no power to commit the offender to gaol, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards. *Dalt. c.* 44.—1 *Haw. c.* 64. § 8.

And if such offenders being in the house at the coming of the justice shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them at all upon such view. *Dalt. c.* 44.

But howsoever if the force be found afterwards by the inquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol, until they have found sureties for *the peace. Dalt. c.* 44. p. 99.

Observation by Dr. Burn. Note; Mr. *Dalton* in this place says *good behaviour,* which I have presumed to alter to *the peace,* as deeming it much the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. *Dalton* hath enlarged more than all other authors, without any assistance from the commission of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine.] *R.* v. Sir *Edm. Elwell,* 2 *Str.* 794. 2 Ld. *Raym.* 1514. He was brought up upon a *habeas corpus,* with a return of the cause of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to discharge him upon exceptions to the commitment, the court refused to enter into the consideration of them, till the conviction was likewise regularly removed before them. But by consent he was bailed in the meantime. And this term the conviction being before the court, it appeared that there was no fine set by the justices, and it was therefore moved to be quashed. It was agreed on both sides that there should be a fine; but it was insisted, that it being now before the K. B. by a *certiorari,* they might set

the fine. But by the court: We are not to execute the judgment of an inferior court. The conviction is to be upon view; and they who view the nature of the force are the properest judges what fine to set: and though a *certiorari* should come before the fine is set, yet it would be no contempt in the justices to complete their judgment by setting one. *Lambard* indeed was of opinion, that the justices could not set the fine at all: but upon what foundation we can never imagine. The justices are not bound to do it upon the spot, but may take a reasonable time to consider of the fine, because by the words of the act, the commitment is to be, till he has paid the fine. The conviction must be quashed, and the defendant discharged.

The same was likewise solemnly resolved in *Leighton*'s case; and that the justice may assess the same either before the commitment or after. 1 *Haw.* c. 64. § 8.

And the fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for H. M.'s use. *Dalt.* c. 44. p. 97.

But upon payment of the fine to the sheriff, or upon sureties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure. *Dalt.* c. 44. p. 97.

And so much concerning removing the force: But the party ousted cannot be restored to his possession by the justice's view of the force, nor unless the same force be found by the inquiry of a jury.

Concerning which it is by stat. 8 *H.* 6. *c.* 9. § 3. enacted as follows; And though that the persons making such entry be present, or else departed before the coming of the justice, he may notwithstanding in some good town next to the tenements so entered, or in some other convenient place by his discretion (and that though he go not to see the place where the force is [*Dalt.* c. 44.]) have power to inquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force. 8 H. 6. c. 9.

§ 4, 5. In order to which, the justice shall make his precept (D) to the sheriff, commanding him in the king's behalf to cause to come before him, sufficient and indifferent persons dwelling next about the lands so entered, to inquire of such entries; whereof every man shall have lands or tenements of 40*s.* a year above reprizes. And the sheriff shall return issues on every of them, at the day of the first precept returnable 20*s.*, and at the second day 40*s.*, and at the third day 100*s.*, and at every day after double. And the sheriff making default shall, on conviction before the same justice or before the judge of assize, forfeit 20*l.*; half to the king, and half to him who shall sue, with costs; and moreover shall make fine and ransom to the king. D.

Before the same justice.] And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the king. *Dalt.* c. 44. p. 99.

And the defendant also, if he be not present, ought to be called to answer for himself; for it is implied by natural justice in the construction of all laws, that no one ought to suffer any prejudice

thereby, without having first an opportunity of defending himself 1 *Haw. c.* 64. § 60.

And it seems to be settled at this day that if the defender tender a *traverse* of the force, the justice ought not to make any restitution, till the traverse be tried. *R* v. *Bengough*, 3 *Salk.* 170.

31 Eliz. c.11. No restitution to be made if the party indicted hath been three years in quiet possession, and his estate not ended.

The defendant may also by stat. 31 *Eliz. c.* 11. plead *three years' possession*; whereby it is enacted, *that no restitution upon an indictment of forcible entry, or holding with force, be made to any person or persons, if the person or persons so indicted hath had the occupation, or hath been in quiet possession by the space of three whole years together next before the day of such indictment so found; and his, her, or their estate or estates therein not ended or determined; which the party indicted shall and may allege for stay of restitution, and restitution to stay until that be tried, if the other will deny or traverse the same; and if the same allegation be tried against the same person or persons so indicted, then the same person or persons so indicted, to pay such costs and damages to the other party as shall be assessed by the judges or justices before whom the same shall be tried; the same costs and damages to be recovered and levied as is usual for costs and damages contained in judgments upon other actions.*

Costs.

It hath been holden that the plea of such possession is good, without shewing under what title or of what estate such possession was; because it is not the title, but possession only, which is material in this case. 1 *Haw. c.*64. § 56.

And it was holden by the court in *Leighton*'s case, that if the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore by a necessary construction the justice must needs have this power incidental to what is expressly given him. 1 *Haw. c.*64. § 8.

And this traverse must be tendered in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. *Dalt. c.* 133. p. 309.—1 *Haw. c.*64. § 58.

Upon which traverse tendered, the justice shall cause a new jury to be returned by the sheriff, to try the traverse; which may be done the next day, but not the same day. *Dalt. c.* 133. p. 309.

And it seemeth he who tendereth the traverse shall bear all the charges of the trial; and not the king or the party prosecuting. *Id.*

8 H.6. c.9.

And by stat. 8 *H.* 6. *c.* 9. § 3. if such forcible entry or detainer be found (E) before such justice, then the said justice shall cause to reseise (F) the lands and tenements so entered or holden, and shall restore the party put out to the full possession of the same.

E.

F.

The said justice.] It seems to be agreed that no other justices of the peace, except those before whom the indictment shall be found, shall have any power either at the sessions or out of it, to make any award of restitution. 1 *Haw. c.* 64. § 50.

Shall cause to reseise.] And the justice may break open the

house by force to reseise the same; and so may the sheriff do, having the justice's warrant. *Dalt. c.* 44. p. 98.

Reseise.] That is, shall remove the force, by putting out all such offenders as shall be found in the house, or upon the lands, that entered or held with force. *Dalt. c.* 130. p. 304.

And shall restore the party put out.] And this he may do in his own proper person; or he may make his warrant to the sheriff to do it. *Dalt. c.* 44.—1 *Haw. c.* 64. § 49.

And by stat. 21 *J. c.* 15. it is enacted, *that such judges, justices, or justice of the peace, as may give restitution unto tenants of any estate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's service, tenants by* elegit, *statute merchant and staple, of lands or tenements by them so holden, which shall be entered upon by force, or holden of them by force.* **21 J. c. 15.**

VI. How punishable on a Certiorari.

Although regularly the justices only who were present at the inquiry, and when the indictment was found, ought to award restitution, yet if the record of the presentment or indictment shall be certified by the justice or justices into the K. B., or the same presentment or indictment be removed or certified thither by *certiorari,* the justices of that court may award a writ of restitution to the sheriff, to restore possession to the party expelled; for the justices of the K. B. have a supreme authority in all cases of the crown. *Dalt. c.* 44. p. 98.

Where a conviction of forcible entry is quashed, the court *must* award restitution.

Also where upon a removal of the proceedings into the K. B. the conviction shall be quashed, the court will order restitution to the party injured. As in the case of *R.* v. *Jones,* 1 *Str.* 474. A conviction of forcible entry was quashed for the old exception of *messuage* or *tenement,* by reason of the uncertainty: but the restitution was opposed on an affidavit that the party's title (which was by lease) was expired since the conviction. But the court said, they had no discretionary power in this case, but were bound to award restitution on quashing the conviction.

VII. How punishable as a Riot.

If a forcible entry or detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no inquiry hath before been made of the force. *Dalt. c.* 44. p. 99.

A. Indictment for a forcible Entry and Detainer. A.

County of ——— } *THE jurors for our lord the king upon their oath present that* A. I. *late of the parish of* ———, *in the county aforesaid, gentleman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was possessed of a certain messuage, with the appurtenances, situate, lying, and being in* ——— *in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come, and unexpired, and being so possessed thereof one* A. O. *late of* ——— *in the said county, yeoman, afterwards, to wit, the said* ——— *day of*

—— *in the year aforesaid, into the same messuage, with the appurtenances aforesaid in* —— *aforesaid, in the parish and county aforesaid, with force and arms, and with strong hand* (*a*), *unlawfully did enter, and the said* A. I. *from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there with force and arms, and with strong hand, unlawfully did expel and put out, and the said* A. I. *from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said* A. O. *him the said* A. I. *from the aforesaid* —— *day of* —— *in the year aforesaid, until the day of the taking this inquisition, from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and doth still keep out, to the great damage of the said* A. I. *against the peace of our said lord the king, and against the form of the statutes* (*b*) *in that case made and provided.*

Note: If it is a freehold, then the party must be said to be *seised* thereof in his demesne as of fee; and consequently he must be thereof *disseised:* otherwise it is of a lesser estate, of which he is not properly said to be *seised,* but possessed thereof at the will of the lord, according to the custom of the manor, or the like, and then he must be *expelled, ejected, amoved,* or the like.

B. B. Record of a forcible detainer upon view.

Note: The books upon the office of a justice of the peace generally set forth that the record ought to be in the present tense, and not in the time past, (and herewith do accord the adjudged cases in the court of K. B.); yet nevertheless they all exhibit the form of a record in the time past, and not in the present. (1 *Str.* 443.) Therefore I have taken the liberty to alter the same from the record in Ld. *Raymond* of the conviction of Sir *Edm. Elwell* and others; (see *ante,* p. 466.) adding the fine thereunto, for the want of which that conviction was quashed. And I have given the form of a record of a forcible *detainer* rather than a forcible *entry,* because the justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof till after the entry is made.

Kent, to wit. *BE it remembered, that on the* —— *of* —— *in the* —— *year of the reign of our sovereign lord* George, &c. *at* Beckingham, *in the county of* Kent *aforesaid,* Eliz. Elwell *complaineth to us Sir* E. Bettenson, *baronet,* P. Burrell, *and* W. Pas-

(*a*) These words are not necessary in an indictment for forcible entry at common law. They are added in indictments on the statute, because the statute uses them. *Say.* 225. But enough must appear upon the indictment, to shew that it was not a common trespass. *R.* v. *Wilson* and others, 8 *T. R.* 357. *Ante,* p. 463.

(*b*) Though the indictment conclude *contra formam statuti,* these latter words may be rejected, if the indictment be good as an indictment at common law. *Say.* 225. But if the indictment be upon the stat. and bad as such, *Q.* if it can be made good at common law by rejecting the above words? See *R.* v. *Wilson, ante,* p. 463.

senger, *esquires, three of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, that Sir* Edm. Elwell, *late of* London, *baronet,* Joseph Billers, *late of* ——— *and* Daniel Monty, *late of* ——— *into the messuage of her the said* E. E. *being the mansion house of her the said* E. E. *called* Langley House, *situate within the parish of* Beckingham *aforesaid, did enter, and her the said* E. E. *of the messuage aforesaid, whereof the said* E. E. *at the time of the entry aforesaid was seised as of the freehold of her the said* E. E. *for the term of her life, unlawfully ejected, expelled, and amoved, and the said messuage from her the said* E. E. *unlawfully, with strong hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided; whereupon the same* E. E. *then to wit, on the said 15th day of* Sept. *at the parish of* B. *aforesaid, prayeth of us, so as aforesaid, being justices, to her in this behalf, that a due remedy be provided, according to the form of the statute aforesaid; which complaint and prayer by us the aforesaid justices being heard, we the aforesaid* E. B. *baronet,* P. B. *and* W. P. *esquires, justices aforesaid, to the messuage aforesaid personally have come, and do then and there find and see the aforesaid* Ed. E., J. B., *and* D. M. *the aforesaid messuage, with force and arms, unlawfully, with strong hand and armed power detaining, against the form of the statute in such case made and provided, according as she the same* El. El. *so as aforesaid hath unto us complained; therefore it is considered by us the aforesaid justices that the aforesaid* Edmund Elwell, Joseph Billers, *and* Daniel Monty, *of the detaining aforesaid with strong hand, by our own proper view then and there as aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid: Whereupon we the justices aforesaid upon every of the aforesaid* Ed. E., J. B., *and* D. M. *do set and impose severally a fine of* 10*l. of good and lawful money of* Great Britain, *to be paid by them and every of them severally to our said sovereign lord the king, for the said offences; and do cause them, and every of them, then and there to be arrested; and the same* Ed. E., J. B., *and* D. M. *being convicted and every of them being convicted upon our own proper view, of the detaining aforesaid with strong hand as is aforesaid, by us the aforesaid justices are committed, and every of them is committed to the gaol of our said lord the king, at* Maidstone *in the county of* Kent *aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively to our said lord the king, for their respective offences aforesaid. Concerning which the premises aforesaid, we do make this our record. In witness whereof, we the aforesaid* E. B. *baronet,* P. B. *and* W. P. *esquires, the justices aforesaid, to this record our hands and seals do set at the parish of* B. *aforesaid, in the county of* Kent *aforesaid, on the* ——— *day of* ——— *in the* ——— *year aforesaid of the reign of our said sovereign lord the now king.*

C.

C. Mittimus for forcible Detainer.

County of ——— } EDWARD Hassel *esquire, one of the justices of our sovereign lord the king, assigned to keep the peace within the said county of* W., *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed: To the keeper of his majesty's gaol at* ——— *in the said county, and to his deputy and deputies there, and to every of them, greeting: Whereas upon complaint made unto me this present day by* A. I. ——— *in the said county, yeoman, I went immediately to the dwelling house of the said* A. I. *at* ——— *aforesaid in the said county, and there found* A. O. *late of* ——— *labourer,* B. O. *late of the same, weaver, and* C. O. *late of* ———, *butcher, forcibly with strong hand and armed power holding the said house, against the peace of our said lord the king, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said* A. O., B. O., *and* C. O., *convicted of the said forcible holding, by mine own view, testimony, and record; commanding you in his said majesty's name to receive them into your said gaol, and there safely to keep them, and every of them respectively, until they shall have respectively paid the several sums of* 10*l. of good and lawful money of* Great Britain *to our said sovereign lord the king, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at* ——— *aforesaid, in the county aforesaid, under my seal, the* ——— *day of* ——— *in the* ——— *year of the reign of our said sovereign lord king* George *the third.*

Note: by the forms in all the books, all the offenders stand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.

D.

D. Precept to the Sheriff to return a Jury.

County of ——— } RICHARD Whinfield *esquire, one of the justices of our lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, to the sheriff of the said county, greeting: On behalf of our said lord the king, I command you that you cause to come before me at* ——— *in the county aforesaid, on the* ——— *day of* ——— *next ensuing, twenty-four sufficient and indifferent men, of the neighbourhood of* ——— *aforesaid, in the county aforesaid, every of whom shall have lands or tenements of* 40*s. yearly at the least, above reprizes, to inquire upon their oaths for our said lord the king, of a certain entry made with a strong hand (as it is said) into the messuage of one* A. I. ——— *aforesaid, in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impannelled*

20s. of issues at the aforesaid day. And have you then there this precept. And this you shall in nowise omit, upon the peril that shall thereof ensue. Witness the said R. W. *at* ——— *in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

The Juror's Oath.

YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry [or *detainer*] *said to have been lately committed in the dwelling house of* ——— *yeoman, at* ——— *in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you God.*

The oath that A. F. *your foreman hath taken on his part, you and every of you shall truly observe and keep on your parts: So help you God.*

E. The Inquisition, Indictment, or Finding of the Jury. E.

County of ——— } *AN inquisition for our sovereign lord the king, indented and taken at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the oaths of* ——— *good and lawful men of the said county, before* J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say upon their oaths aforesaid, that* A. I. *of* ——— *aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne, as of fee* [if it is not freehold, then say *possessed*] *of and in one messuage, with the appurtenances, in* ——— *aforesaid, in the county aforesaid, and his said possession* [*and seisin*] *so continued until* A. O. *late of* ——— *yeoman,* B. O. *late of the same, yeoman, and* C. O. *late of the same, yeoman, and other malefactors unknown, the* ——— *day of* ——— *now last past, with strong hand and armed power into the messuage aforesaid with the appurtenances aforesaid did enter, and him the said* A. I. *thereof disseised, and with strong hand expelled; and him the said* A. I. *so disseised and expelled from the said messuage with the appurtenances aforesaid, from the said* ——— *day of* ——— *until the day of the taking of this inquisition with like strong hand and armed power did keep out, and do yet keep out; to the great disturbance of the peace of our said lord the king, and against the form of the statute in such case made and provided.*

We whose names are hereunto set, being the jurors aforesaid, do, upon the evidences now produced before us, find the inquisition aforesaid true.

A. B.
C. D. *&c.*

F.

F. Warrant to the Sheriff for Restitution.

County of ——— } MARTIN Dunn *esquire, one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed to the sheriff of the said county, greeting: Whereas by an inquisition taken before me the justice aforesaid, at* ——— *in the county aforesaid, on this present* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *upon the oaths of* ——— *and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that* A. O. *late of* ——— *yeoman, and* B. O. *late of* ——— *yeoman, on the* ——— *day of* ——— *now last past, into a certain messuage with the appurtenances of* A. I. *of* ——— *aforesaid, in the county aforesaid, gentleman, situate, lying, and being at* ——— *aforesaid, in the county aforesaid, with force and arms did enter, and him the said* A. I. *thereof then with strong hand did disseise and drive out, and him the said* A. I., *thus driven out from the aforesaid messuage, with the appurtenances, from the* ——— *day of* ——— *aforesaid, to this present day of the taking of the said inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth of record: Therefore on the behalf of our said sovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the said messuage and other the premises, and the same with the appurtenances you cause to be reseised, and that you cause the said* A. I. *to be restored and put into his full possession thereof, according as he, before the entry aforesaid, was seised, according to the form of the said statutes. And this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

For any additional forms which may be requisite, see *Wentworth's System of Pleading*, vol. 4. from 148. *to* 156.

Foreign Service.

[3 *J.* 1. *c.* 4. — 59 *G.* 3. *c.* 69.]

ENTERING into the service of any foreign state without the king's consent, or contracting with it any engagement which subjects the party to an influence or controul, inconsistent with the allegiance due to his sovereign, such as receiving a pension from a foreign prince without the king's leave is at common law a high misdemeanor, and punishable accordingly. 1 *East's P. C.* 81. 4 *Blac. Com.* 122.

Indeed, it is considered as so high an offence to prefer the interest of a foreign state to that of our own, that any act is criminal which may but incline a man to do so; as to receive a pension from a foreign prince without the leave of the king. 1 *Haw.* c. 22. § 3. 1 *Russ.* 127.

But with respect to serving, or procuring others to serve foreign states, provisions have been made by several statutes. Stat. 3 *Jac.* 1. c. 4. § 18. enacts, that " every subject of this realm that shall go or pass out of this realm to serve any foreign prince, state, or potentate, or shall pass over the seas, and shall voluntarily serve any such foreign prince, state, or potentate, not having before his going taken the oath of obedience (*a*), shall be a felon." The 19th section enacts, that " if any gentleman or person of higher degree, or any person which hath borne, or shall bear any office, or place of captain, lieutenant, or any other place, charge, or office, in camp, army, or company of soldiers, or conductor of soldiers, shall after go or pass voluntarily out of this realm, to serve any such foreign prince, state, or potentate, or shall voluntarily serve any such prince, state, or potentate, before that he and they shall become bound by obligation, with two sureties, &c." with a condition to the effect that he will not be reconciled to the see of Rome, nor enter into any conspiracy against the king (as particularly set forth in the act) " he shall be a felon." 3 J. 1. c. 4.

And by stat. 59 *G.* 3. c. 69., (after repealing stats. 9 *G.* 2. c. 30., 29 *G.* 2. c. 17., and the Irish acts, 11 *G.* 2. and 19 *G.* 2.) 59 G. 3. c. 69.

Subjects enlisting or engaging to enlist or serve in foreign service, military or naval, guilty of misdemeanor.

§ 2. " If any natural-born subject of H. M., his heirs and successors, without the leave or licence of H. M., his heirs or successors, for that purpose first had and obtained, under the sign manual of H. M., his heirs or successors, or signified by order in council, or by proclamation of H. M., his heirs or successors, shall take or accept, or shall agree to take or accept any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of H. M. shall, without such leave or licence as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed, or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of govern-

(*a*) Stat. 1 *W.* & *M.* st. 1. c. 8. gives a new oath.

59 G.3. c.69. ment in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of H. M. shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the U. K. of *G. B.* and *Ireland*, or in any part of H. M.'s dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to H. M., shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go or to agree to go or embark from any part of H. M.'s dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

All persons retaining or procuring others to enlist, guilty of the like offence.

Act not to extend to persons enlisted or serving before the times herein specified.

§ 3. Nothing in this act contained shall extend to render any person liable to any punishment or penalty under this act, who at any time before the 1st of *August*, 1819, within any part of the U. K., or of the islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, or at any time before the 1st of *November*, 1819, in any part or place out of the U. K., or of the said islands, shall have taken or accepted, or agreed to take or accept any military commission, or shall have otherwise enlisted into any military service as a commissioned or non-commissioned officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a soldier, or shall have served, or having so served shall, after the said 1st of *August*, 1819, continue to serve in any warlike or military operation, either as an officer or soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept any commission, warrant, or appointment as an

officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a sailor or marine, or shall have been employed or engaged, or shall have served, or having so served shall, after the said 1st of *August*, continue to serve in and on board any ship or vessel of war, used or fitted out, or equipped or intended for any warlike purpose; or shall have engaged, or contracted or agreed to go, or shall have gone to, or having so gone to shall, after the said 1st day of *August*, continue in any foreign state, country, colony, province, or part of a province, or to or in any place beyond the seas, unless such person shall embark at or proceed from some port or place within the U. K., or the islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, with intent to serve as an officer, soldier, sailor, or marine, contrary to the provisions of this act, after the said 1st of *August*, or shall embark or proceed from some port or place out of the U. K., or the islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, with such intent as aforesaid, after the said 1st of *November*, or who shall, before the passing of this act, and within the said U. K., or the said islands, or before the 1st of *November*, 1819, in any port or place out of the said U. K. or the said islands, have hired, retained, engaged, or procured, or attempted or endeavoured to hire, retain, engage, or procure, any person whatever to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, or to go, or agree to go or embark for the purpose or with the intent to be so enlisted, entered, or engaged or employed, contrary to the prohibitions in this act contained; but all and every such persons shall be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person was liable to before the passing of this act, and as such person would have been in, and liable to, in case this act and the said recited acts by this act repealed had not been passed. 59 G. 3. c. 69.

§ 4. It shall be lawful for any justice of the peace residing at or near to any port or place within *G. B.* and *Ireland*, where any offence made punishable by this act as a misdemeanor shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any justice of the peace; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail, to the satisfaction of the said justice, to appear and answer to any information or indictment to be preferred against him, according to law, for the said offence; and all such offences which shall be committed within *England*, shall be proceeded and tried in H. M.'s court of K. B. at *Westminster*, and the venue in such case laid at *Westminster*, or at the assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and that all such offences which shall be committed within *Ireland* shall and may be prosecuted in H. M.'s court of K. B. at *Dublin*, and the venue be laid at *Dublin*, or at any assizes or session of oyer and terminer and gaol de-

Justices to issue warrants for the apprehension of offenders.

Where offences shall be tried.

59 G. 3. c. 69. livery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and all such offences as shall be committed in *Scotland* shall and may be prosecuted in the court of justiciary in *Scotland*, or any other court competent to try criminal offences committed within the county, shire, or stewartry within which such offence was committed; and where any offence made punishable by this act as a misdemeanor shall be committed out of the said U. K., it shall be lawful for any justice of the peace residing near to the port or place where such offence shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any other justice of the peace for such place; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offence on oath, and to commit such person to gaol, there to remain till delivered by due course of law, or otherwise to hold such offender to bail to answer for such offence in the superior court, competent to try, and having jurisdiction to try criminal offences committed in such port or place; and all such offences committed at any place out of the said U. K. shall and may be prosecuted and tried in any superior court of H. M.'s dominions competent to try, and having jurisdiction to try criminal offences committed at the place where such offence shall be committed.

Vessels with persons on board engaged in foreign service, may be detained at any port in H. M.'s dominions.

§ 5. "In case any ship or vessel in any port or place within H. M.'s dominions, shall have on board any such person or persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or who shall be departing from H. M.'s dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any foreign prince, state, or potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign colony, province, or part of any province or people, either as an officer, soldier, sailor, or marine, contrary to the provisions of this act, it shall be lawful for any of the principal officers of H. M.'s customs where any such officers of the customs shall be, and in any part of H. M.'s dominions in which there are no officers of H. M.'s customs, for any governor or persons having the chief civil command, upon information on oath given before them respectively, which oath they are hereby respectively authorized and empowered to administer, that such person or persons as aforesaid is or are on board such ship or vessel, to detain and prevent any such ship or vessel, or to cause such ship or vessel to be detained and prevented from proceeding to sea on her voyage with such persons as aforesaid on board; provided nevertheless, that no principal officer, governor, or person, shall act as aforesaid, upon such information upon oath as aforesaid, unless the party so informing shall not only have deposed in such information that the person or persons on board such ship or vessel hath or have been enlisted or entered to serve, or hath or have engaged or agreed or been procured to enlist or enter or serve, or is or are departing as aforesaid, for the purpose and with the intent of enlisting or entering to serve or to be employed, or of serving, or being engaged or em-

Oath to be made as to facts and circumstances.

ployed in such service as aforesaid, but shall also have set forth in such information upon oath the facts or circumstances upon which he forms his knowledge or belief, enabling him to give such information upon oath; and that all and every person and persons convicted of wilfully false swearing in any such information upon oath shall be deemed guilty of and suffer the penalties on persons convicted of wilful and corrupt perjury." 59 G.3. c.69.

Penalty on masters of ships, &c. taking on board persons enlisted contrary to this act, 50*l.* for each.

§ 6. If any master or other person having or taking the charge or command of any ship or vessel, in any part of *G. B.* and *Ireland*, or in any part of H. M.'s dominions beyond the seas, shall knowingly and willingly take on board, or if such master or other person having the command of any such ship or vessel, or any owner of any such ship or vessel, shall knowingly engage to take on board any person who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or who shall be departing from H. M.'s dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in any naval or military service, contrary to the provisions of this act, such master or owner or other person as aforesaid shall forfeit and pay the sum of 50*l.* for each such person so taken or engaged to be taken on board; and moreover every such ship or vessel, so having on board, conveying, carrying, or transporting any such person, may be seized and detained by the collector, comptroller, surveyor, or other officer of the customs, until such penalty or penalties shall be satisfied and paid, or until such master or person, or the owner of such ship or vessel, shall give good and sufficient bail, by recognizance before one of H. M.'s justices of the peace, for the payment of such penalty or penalties.

Penalty on persons fitting out armed vessels to aid in military operations with any foreign powers without licence;

§ 7. "If any person, within any part of the U. K., or in any part of H. M.'s dominions beyond the seas, shall without the leave and licence of H. M. for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt, or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom H. M. shall not then be at war; or shall, within the U. K., or any of H. M.'s dominions, or in any settlement, colony, territory, island, or place belonging or subject to H. M., issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information

or issuing commissions for ships.

59 G.3. c.69. or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of H. M.'s customs or excise, or any officer of H. M.'s navy, who is by law empowered to make seizures, for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of H. M.'s customs or excise and the officers of H. M.'s navy are empowered respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, appparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner, and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation."

Penalty for aiding the warlike equipment of vessels of foreign states, &c.

§ 8. "If any person in any part of *G. B.* and *Ireland*, or in any part of H. M.'s dominions beyond the seas, without the leave and licence of H. M. for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruizer, or other armed vessel, which at the time of her arrival in any part of the U. K., or any of H. M.'s dominions, was a ship of war, cruizer, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country under the controul of any person or persons so exercising or assuming to exercise the powers of government, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

Offences committed out of the kingdom may be tried at Westminster.

§ 9. Offences punishable by this act, committed out of the U. K., may be tried in the court of K. B. at *Westminster*, and the venue laid at *Westminster*, in the county of *Middlesex*.

How penalties shall be sued for and recovered.

§ 10. Any penalty inflicted by this act may be sued for and recovered by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster* or *Dublin*, or in the court of exchequer, or in the court of session in *Scotland*, in the name of H. M.'s attorney general for *England* or *Ireland*, or H.M.'s advocate for *Scotland* respectively, or in the name of any person or persons whatsoever; wherein no essoign, protection, privilege, wager of

Double costs.

law, nor more than one imparlance shall be allowed; and in every

action or suit the person against whom judgment shall be given for any penalty under this act shall pay double costs; and every such suit may be brought at any time within twelve months after the offence committed, and not afterwards; and one moiety shall go to H. M., and the other moiety to the use of such person or persons as shall first sue for the same.

59 G. 3. c. 69.

Limitation of actions.

§ 11. If any action or suit shall be commenced, either in *G. B.* or elsewhere, against any person or persons for any thing done in pursuance of this act, all rules and regulations, privileges and protections, as to maintaining or defending any suit or action, and pleading therein, or any costs thereon, in relation to any acts done, or that may be done by any officer of customs or excise, or by any officer of H. M.'s navy, under any act in force for the protection of the revenues of customs and excise, or prevention of smuggling, shall apply in any such action or suit brought for any thing done in pursuance of this act.

Former rules established by law to be applied to actions commenced in pursuance of this act.

§ 12. Nothing in this act contained shall extend to subject to any penalty any person who shall enter into the military service of any prince, state, or potentate in *Asia*, with leave or licence, from the governor general in council, or vice president in council, of *Fort William* in *Bengal*.

Penalties not to extend to persons entering into military service in Asia.

Disobedience to the king's letter to a subject commanding him to return from beyond the seas, or to the king's writ of *ne exeat regno*, commanding a subject to stay at home, is a high misprision and contempt. 4 *Blac. Com.* 122.

Prerogative of *ne exeat regno*, &c.

And it is also a high offence to refuse to assist the king for the good of the public, either in councils, by advice, if called upon, or in his wars by personal service for the defence of the realm against a rebellion or invasion. 1 *Haw. c.* 22. § 2.—1 *Russ.* 130.

Refusing to assist H. M. in council, &c.

Forestalling, ingrossing, and regrating.

[5 & 6 Ed. 6. c. 14.—12 G. 3. c. 71.]

FORESTALLING (*forestællan*, or *forestallan*) in the English Saxon, signifieth properly to *market before the public*, or to *prevent the public market*; and metaphorically, to *intercept* in general; and seemeth derived from *fore*, which is the same as *before*, and *stalle*, a standing place or department; from whence sprang the ancient word *stallage*, which signifieth money paid for erecting a stall or stand, for the selling of goods in a fair or market.

Derivation.

Ingrossing is from *in*, and *gross*, great or whole.

And *regrating*, from *re*, again, and the French *grater*, to *grate* or scrape; and signifieth the scraping or dressing of cloth or other goods, in order for selling the same again.

There have been several statutes made from time to time against these offences in general, and also especially with respect to particular species of goods according to their several circumstances; almost all of which from stat. 5 & 6 *Ed.* 6. *c.* 14., and others downwards made for enforcing the same are repealed by stat. 12 *G.* 3. *c.* 71. But these offences still continue punishable upon indictment at the common law by fine and imprisonment.

All the statutes against those offences are repealed.

But the offences remain punishable at common law.

And at the common law all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such like devices, are highly criminal, and punishable by fine and imprisonment. 1 *Haw. c.* 80. § 1. 1 *Russ.* 255.

By the common law a merchant bringing victuals into the realm may sell the same in gross: but no person can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, without being liable to be indicted for the same. 3 *Inst.* 196.

The bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at common law, whether any part thereof be sold by the ingrosser or not. 1 *Haw. c.* 80. § 3.

And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf; perhaps for this reason, because by such means, the market is in effect forestalled. 1 *Haw. c.* 80. § 4.

By stat. 5 & 6 *Ed.* 6. *c.* 14. these offences were particularly described; which statute, though now repealed as aforesaid, yet may be of use as containing a parliamentary exposition of the respective terms denoting the several particular offences; and is to the following effect:—

5 & 6 E. 6. c. 14. *Forestaller.* *Whosoever shall buy or cause to be bought any merchandize, victual, or any other thing whatsoever, coming by land or by water, toward any market or fair to be sold in the same, or coming towards any city, port, haven, creek, or road from any parts beyond the sea to be sold; or make any bargain, contract, or promise, for the having or buying the same, or any part thereof, so coming as is aforesaid, before the said merchandize, victuals, or other things shall be in the market, fair, city, port, haven, creek, or road, ready to be sold; or shall make any motion by word, letter, message, or otherwise, to any person for the enhancing of the price, or dearer selling of any thing above mentioned; or else dissuade, move, or stir any person coming to the market or fair, to abstain or forbear to bring or convey any of the things above rehearsed to any market, fair, city, port, haven, creek, or road to be sold as aforesaid ——— shall be deemed a* forestaller.

Ingrosser. § 3. *Whosoever shall ingross, or get into his hands by buying, contracting, or promise taking, other than by demise, grant, or lease of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, to the intent to sell the same again, shall be deemed an unlawful* ingrosser.

Regrator. § 2. *And whosoever shall by any means regrate, obtain, or get into his hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and shall sell the same again in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be deemed a* regrator. (*a*)

5 & 6 E. 6. c. 14. It has been observed that notwithstanding the repeal of stat. 5 & 6 *E.* 6. the offences of forestalling, ingrossing, and regrating,

remain punishable at common law; and indeed lamentable would be the plight of the public and of the state, were there no remedy against practices which have been justly termed most heinous offences against religion and morality, and against the established law of the country.

In the case of *R* v. *Waddington*, 1 *East*, 143. 145., which was ably argued at the bar, and well considered by the court, the following were declared to be among the offences at common law, and not done away by the repeal of stat. 5 & 6 *E.* 6. *viz.* R. v. Waddington.

1. Spreading false rumours with intent to enhance the price of hops.

2. Endeavouring to enhance the price of hops by persuading dealers, &c. not to take their hops to market, and to abstain from selling for a long time.

3. Ingrossing large quantities of hops, by buying with intent to resell the same for an unreasonable profit, and thereby to enhance the price.

4. Getting into hand large quantities, by contracting with various persons for the purchase, with intent to prevent the same being brought to market, and to resell at an unreasonable profit, and thereby greatly to enhance the price.

5. Unlawfully ingrossing by buying large quantities, with like intent.

6. Ingrossing hops then growing, by forehand bargains, with like intent.

To forestall any commodity which is become a common victual and necessary of life, or is used as an ingredient in the making or preservation of any victual, though not formerly used or considered as such, is an offence at common law. *R* v. *Waddington*, 1 *East*, 143.

It is well observed by Mr. Chitty, that at the present day, it would probably be holden that no offence is committed unless there is an intent to raise the price of provisions by the conduct of the party, for the mere transfer of a purchase in the market where it is made, the buying articles before they arrive at a public market, or the purchasing of a large quantity of a particular article, can scarcely be regarded as in themselves necessarily injurious to the community, and as such, indictable offences; a party buying and selling again, does not necessarily increase the price of the commodity to the consumer, for the division of labour or occupations will, in general, occasion the commodity to be sold cheaper to the consumer; see *Smith's Wealth of Nations*, book 4. c. 5. and Index, title *Labour*; and many cases may occur in which a most laudable motive may exist for buying large quantities of the same commodity. See the arguments, &c. in 14 *East*, 406. 15 *East*, 511. Indeed, in the case of the *King* v. *Rusby*, *H. T.* 40 G. 3., the court were equally divided on the question, whether regrating is an indictable offence at common law, and though the defendant was convicted, no judgment was ever passed upon him. 2 *Crim. Law*, 528. (n) 537. (n) R. v. Rusby.

An indictment for ingrossing "a great quantity" of fish, geese, Indictment

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(*a*) Regrator is said to be derived from the *French* word *regratement*, for huckstery. 3 *Inst.* 195.

must state the quantity.

and ducks, was holden bad; for the quantity of each ought to be specified. *R* v. *Gilbert*, 1 *East*, 583.

Forests. See Game.

Forfeiture.

The forfeitures for particular offences may be found under their respective titles: here it is treated of forfeitures in general.

§ I. *Of Forfeiture of Lands and Goods.*
[1 R.3. c.3.—17 Ed.2. c.16.—54 G.3. c.145.]

II. *Of Loss of Dower.*
[1 Ed.6. c.12.—5&6 Ed.6. c.11.]

III. *Of Corruption of Blood.*

§ I. Of Forfeiture of Lands and Goods.

Forfeiture of lands.

IT seems agreed that by the common law all lands of inheritance, whereof the offender was seised in his own right, and also all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treason, and to the lord of whom they are immediately holden by an attainder of petit treason or felony. 2 *Haw.* c. 49. § 1.

But it seems clear that the lord cannot enter into the lands holden of him, upon an escheat for petit treason or felony, without a special grant, till it appear by due process that the king hath had his prerogative of the year, day, and waste. *Id.* § 3.

17 Ed.2. c.16.

Concerning which year, day, and waste, it is enacted by the 17 *Ed.*2. *c.* 16. that the king shall have the goods of all felons attainted, and fugitives, wheresoever they be found. And if they have freehold, it shall be forthwith taken into the king's hands, and the king shall have all profits of the same by one year and one day; and the land shall be wasted and destroyed in the houses, woods, and gardens, and in all manner of things belonging to the same land. And after the king hath had the year, day, and waste, the land shall be restored to the chief lord of the fee, unless that he fine before with the king for the year, day, and waste.

54 G.3. c.145.

By stat. 54 *G.*3. *c.* 145. No attainder except for high treason, petit treason, or murder, or for abetting the same, shall extend to the disinheriting of any heir, &c. *Vide tit.* Attainder, Vol. I.

Forfeiture of goods.

As to forfeiture of goods, it seems agreed that all things whatsoever which are comprehended under the notion of a personal estate, whether they be in action or possession, which the party hath or is entitled to in his own right, and not as executor or administrator to another, are liable to such forfeiture, in the following cases:

(1) Upon a conviction of treason or felony. 2 *Haw.* *c.* 49. § 13.

(2) Upon a flight found before the coroner, on view of a dead body. *Id.* § 14.

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *Id.*

(4) Also a person indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods as in case of grand larceny. 1 *Hale*, 530.—2 *Haw. c.* 49. § 14.

But it is certain that the party may in all cases, except that of the coroner's inquest, traverse the finding of the flight. Also it seems agreed that the particulars of the goods found to be forfeited may be also traversed. 2 *Haw. c.* 49. § 14.

(5) Upon a presentment by the oaths of 12 men that a person arrested for treason or felony fled from or resisted those who had him in custody, and was killed by them in the pursuit or scuffle. *Id.* § 16.

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods so waived, whether they be his own, or the goods of others stolen by him, which shall not be restored to the right owners but upon a proper prosecution. *Id.* § 17.

(7) Also a convict within clergy forfeits all his goods, though he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. 2 *Hale*, 388, 389.

But on burning in the hand, he ought to be immediately restored to the possession of his lands. 2 *Hale*, 389.

(8) If a person be found *felo de se*, he shall forfeit his goods and chattels, but not his lands. 3 *Inst.* 54.— 5 *Rep.* 109.

Forfeiture upon outlawry.

Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. *Wood's Inst. b.* 4. *c.* 5.

And those that tarry till the exigent in treason, felony, or petit larceny, forfeit their goods, though they render themselves to justice, and are acquitted; for it was a flight in law. *Id.*

Forfeiture in *se defendendo*.

But where the killing a man in his own defence is in the law no felony, there is no forfeiture unless he fled; for that is a distinct forfeiture, although the party be not guilty of the fact. 1 *Hale*, 493.

To what time the forfeiture shall relate.

It seems agreed that the forfeiture, upon an attainder, either of treason or felony, shall have relation to the time of the offence, for the avoiding of all subsequent alienations of the *land*, but to the time of the conviction or flight found only, as to *chattels*; unless the party were killed in flying or resisting, in which case it is said that the forfeiture of the chattels shall relate to the time of the offence. 2 *Haw. c.* 49. § 30.

What is to be done with the felon's goods before forfeiture.

But though the goods of an offender be not forfeited till the conviction or flight found by inquest, yet whether they may be seized upon the offence committed, hath been controverted; concerning which Lord *Hale* saith thus;—

It seemeth clear that at the common law, if a man had committed felony or treason, or though possibly he had committed none, yet if he had been indicted, the sheriff, coroner, or other officer could not seize and carry away the goods of the offender or party accused.

Again, he could not in that case have removed the goods out of the custody of the offender or party accused, and deliver them over to the constables, or to the *villata*, to answer for them.

But if the party were indicted, the sheriff or other officer might make a simple seizure of them only to inventory and appraise them, and leave them to the custody of the servants or bailiff of the party

indicted, in case he would give security against their being embezzled, or in default thereof he might deliver them to the constable or vill to be answerable for them, but yet so that the party accused and his family have sufficient out of them for their livelihood and maintenance.

And possibly the same law was, though he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of seizure might have been made, whether he committed the felony or not.

But in case there were no indictment, then it is at the peril of him that seizeth, if he committed not the felony.

1 R. 3. c. 3. And then as to the statute of 1 *R.* 3. *c.* 3. it is as follows: —

No sheriff or other person shall take or seize the goods of any person arrested or imprisoned for suspicion of felony, before he be convicted or attainted, or before the goods be otherwise forfeited; on pain of double value to the party grieved.

Mr. *Staundforde* thinks this is but in affirmance of the common law, only that it gives a penalty; but it seems to be somewhat more; for this prohibits the seizure of the goods of a party imprisoned, though he were also indicted, but not yet convicted, where unquestionably the common law allowed such a seizure, if the party or his friends did not secure the forthcoming of the goods, where the party was indicted.

But upon this statute these things are considerable; 1. As to persons at large, it seems to me (says he), that if they fly not, there can be no seizure at all made whether they are indicted or not; for the statute did not intend a greater privilege to a party imprisoned, than to him that is at large. 2. That if he be at large, and *fly* for it, yet his goods cannot be seized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraised, and inventoried, in the house or place where they lie.

And yet I know not how it comes to pass, says he, the use of seizing the goods of persons accused of felony, though imprisoned or not imprisoned, hath so far obtained, notwithstanding this statute; that it passeth for law and common practice, as well by constables, sheriffs, and other the king's officers, as by lords of franchises, that there is nothing more usual.

Upon the whole, he says, that the opinion of my Lord *Coke*, in his 3 *Inst.* 228., hath truly stated the law, at least as it stands upon the statute of 1 *R.* 3. *viz.* 1. That *before* the indictment, the goods of any person cannot be searched, inventoried, or in any sort seized. 2. That *after* the indictment, they cannot be seized and removed, or taken away before conviction or attainder.

But then it may be said, to what purpose may they be searched and inventoried, after indictment, if they may not be removed, but are equally liable to embezzling as before.

I think (he says) he is not bound to find sureties, neither hath the officer at this day any power to remove them in default of sureties, and commit them to the vill, but only to inventory them, and leave them where he found them, (unless in case of a second *capias* on stat. 25 *Ed.* 3. *c.* 14.) for the prisoner or party indicted may sell them *bonâ fide;* and if he may do so, the vendee may take them, and the *villata* cannot refuse the delivering of them to the vendee, though the goods had been delivered to them.

But there is this advantage by the viewing and appraising, that

thereby the king is ascertained what the goods are, and may pursue them that take or embezzle them by information (if the party happen to be convict) and try the property with them, whether they are really sold, or sold only fraudulently, without valuable consideration, to prevent the forfeiture. 1 *Hale*, 363, 4, 5, 6, 7.

§ II. Of Loss of Dower.

Albeit a person shall be attainted of felony, yet his wife shall not forfeit her dower. 1 *Ed.*6. *c.*12. § 17. Forfeiture of dower in felony.

But on his attainder of treason she shall forfeit her dower. 5&6 *Ed.*6. *c.*11. § 13. In treason.

But in some kinds of treason, (particularly with regard to the coin,) there is a special saving of the wife's dower by statute.

§ III. Of Corruption of Blood.

It is agreed that by an attainder of treason or felony, the blood is so far stained or corrupted, that the party loses all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw.* *c.*49. § 47. Corruption of blood.

Also, that he can neither inherit as heir to an ancestor, nor have an heir. *Id.* § 48.

But the king's pardon, though it doth not restore the blood, yet as to issue born after, hath the effect of a restitution. 1 *Hale*, 358.

But restitution of blood, in its true nature and extent, can only be by act of parliament. 1 *Hale*, 358.—2 *Haw.* *c.*49. § 51.

See stat. 54 *G.*3. *c.* 145., title Attainder, Vol. I.

Forgery. (a)

Sect. I. *Of Forgery at Common Law.*
II. ——— *by Statute.*
[25 E.3. stat.5. c.2.—1 M. stat.2. c.6.—5 El. c.14.—7 Ann. c.21.—2 G.2. c.25.—7 G.2. c.22.—18 G.3. c. 18.—41 G.3. U.K. c.39.—41 G.3.(U.K.) c.57.—45 G.3. c.89.—52 G.3. c.138.—53 G.3. c.139.—1 G.4. c.92.:—and for the other statutes *see post*, p.498.]
III. *Of the Indictment and Evidence.*

§ I. Of Forgery at Common Law.

FORGERY is an offence at common law, and an offence also by statute.

Forgery at the common law is an offence in falsely and fraudulently making or altering any manner of record, or any other authentic matter of a public nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, and the like. 1 *Haw.* c.70. § 1.

Mr. J. *Blackstone* says, that forgery is the fraudulent making or

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(a) See the Report from a Select Committee of the House of Commons on the Criminal Law of *England*, dated 2d *April*, 1824, which contains a most able and accurate statement of the present law upon this subject.

alteration of a writing to the prejudice of another's right. 4 *Black. Com.* 247.

Mr. J. *Grose* in delivering the opinion of the judges in *Reculist's* case says, "The crime of forgery is a false making of any instrument with intention to defraud." *O. B. May*, 1796.—2 *Leach*, 707.

The counterfeiting of any writing with a fraudulent intent, whereby another may be prejudiced, (it is immaterial whether the party be actually injured or not,) is also a forgery at common law. 2 *East's P. C.* 861.

Forging an order from one to charge certain goods contained in a schedule to his account, and to appropriate part of the proceeds to defendant's own use, &c. with intent to defraud, is forgery at common law, though no fraud be effected.

R v. *Ward*. 2 *Stra*. 747.—2 *Ld. Raym.* 1461.—2 *East's P. C.* 861.—2. *Russ.* 1467. An information was filed by the attorney-general charging that the defendant *Ward* being bound to deliver 315 tons and a quarter of alum of the value of 1000*l.* to the Duke of *Buckingham* at a certain day then past, he, the defendant, wickedly contriving and intending the said duke of the said alum to deceive and defraud, and with a wicked and fraudulent intent to avoid the delivery of the said alum, on, &c. at &c. with force and arms, upon the back of a certain certificate in writing signed by one A. N. falsely forged and counterfeited and caused to be forged and counterfeited a certain writing in the words and figures following:—

" *Schedule*	Tons. C.
	660 - 5
	315 - 5
	975 10

Mr. *John Ward*, I do hereby order you to charge the quantity of 660 tons and 1 quarter of alum to my account, part of the quantity here mentioned in this certificate, and out of the money arising by the sale of the alum in your hand to pay to Mr. *W. Ward* and yourself 10*l.* for every ton according to agreement; and for your so doing this shall be your discharge. *Buckingham, April* 30th, 1706." To the evil example, &c. to the great damage of the said duke, and against the peace &c. A second count charged him with publishing the same forged writing knowing it to be forged,

Motion in arrest of judgment.

&c. After conviction, it was moved in arrest of judgment that the instrument set forth was not the subject of forgery at common law; but at most the offence was only punishable as a cheat, and not in this form, being merely a thing of a private nature, and in effect nothing more than a letter; and if the counterfeiting a letter had been punishable as a forgery at common law, then the making the stat. 33 *H.* 8. *c.* 1. to punish those who got money or goods of others under colour of false tokens or counterfeit letters was nugatory; that it no where appeared that the duke had been prejudiced by this, which if he had, it might have been indictable as a cheat, but not as a forgery at common law.—But all the court held that this was indictable as a forgery at common law; that none of the books confine the offence to the particular kinds mentioned in 3 *Inst.* 169.; and that as forging a writing not sealed came within all the mischief of forging a deed, the maxim applied *ubi eadem est ratio eadem est lex;* that this was recognized in the preamble of the stat. 5 *Eliz. c.* 14. which recites that the forging of writings "as well as of deeds" was punishable by law before that statute, but that offenders had been encouraged by the too great mildness of the punishments; and that the 33 *H.* 8. *c.* 1. did not create new offences, but only enhanced the penalty where the fraud was executed. They also referred to several instances of indictments at common law for forging instruments not under seal, as a bill of lading (5 *Mod.* 137.), and acquittance (1 *Sid.* 278.), a

warrant of attorney (*T. Ray.* 81.), a marriage register (2 *Sid.* 71.), a bill of exchange (*Roll.* 35.), letters of credit to gather money (*Sty.* 12.), and others of a similar kind; and they distinguished this offence from cheats at common law and upon the 33 *H.* 8. *c.* 1. where the party received an actual prejudice, which was not necessary to constitute forgery; it being sufficient if the party might be prejudiced by it.

Fawcett's case, York Sp. Ass. 1793.—2 *East's P. C.* 862. 2 *Russ.* 1470. *Leander Fawcett*, who had been committed to the gaol at *York*, under an attachment sued out of the court of K.B. for a contempt in a civil suit, was indicted for forging a certain writing purporting to be signed in the name of *A. Dawson*, (the party who had prosecuted the writ of attachment against him) and to contain the authority of *Dawson* to the sheriff for his discharge, in the following form: "To the high sheriff of the county of *York*, his deputy, &c. and gaoler. As to any writ, attachment, or any other process, or cause whatsoever, at the suit, instance, or promotion of me *A. Dawson*, by reason whereof *Leander Fawcett* is now detained a prisoner in your custody, you may forthwith discharge and set at liberty him the said *Leander Fawcett*, unless detained at the suit of some other person; and for so doing this shall be your warrant and indemnity. (Dated) 26th *February*, 1793. (Signed) *A. Dawson*, and witnessed by one *R. W.*" The defendant having been convicted, several questions were submitted to the consideration of the judges; and, amongst others, whether the order were a matter of such a public nature, that the counterfeiting of it would be a forgery at common law; and also, whether, as the attachment was for non-payment of money, the order, if genuine, would not have been a mere nullity, and the sheriff not authorized to discharge the prisoner under it. *Lord Kenyon* C. J. and *Eyre* C. J. said, that there was an injury to a third person, and that it was an interruption to public justice: but the latter thought it was not a forgery, but a cheat. The matter was adjourned to a subsequent term, when *Eyre* C. J. was still not satisfied as to the forgery; though he thought the indictment good as for a cheat. But all the judges concurred in holding that the offence was indictable as for a misdemeanor at common law; and a great majority also thought it was forgery at common law.

The defendant having been committed to gaol under an attachment for a contempt in a civil cause, counterfeited a pretended discharge as from his creditor to the sheriff and gaoler, under which he obtained his discharge from gaol; and it was holden to be a misdemeanor at common law; although, as the attachment was not for the non-payment of money, the order was in itself a mere nullity, and no warrant to the sheriff for the discharge. A majority of the judges also thought that it was a forgery at common law.

But as to the power of justices of the peace in this matter, Mr. *Hawkins* says, it hath been settled of late that they have no jurisdiction over forgery at the common law; the principal reason of which resolution, he says, as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass* in its most proper and natural sense is taken for such kind of injuries, it shall be understood in that sense only in the commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. And this was confirmed in the case of *Micah Gibbs*, 1 *East*, 173., where it was determined that the sessions have no jurisdiction over the offence of forgery at common law, nor can they take cognizance of it as a cheat. 2 Haw. c. 8. § 38.

But Mr. *Barlow* says nevertheless, that it seemeth clear that a justice of the peace may take an information thereof, bind

over the informers, examine the offender, certify his examination to the proper judges, and commit him to prison in order to abide his trial. *Barl.* 244.

§ II. Of Forgery by Statute.

25 E.3. st.5. c.2.
1 M. st. 2. c. 6.
7 A. c. 21. § 9.

By stat. 25 *E.*3. *st.*5. *c.*2. To counterfeit the king's great or privy seal is treason. And also by stat. 1 *M. st.*2. *c.*6. falsely to forge or counterfeit the queen's sign manual, privy signet, or privy seal, is treason; and finally by stat. 7 *Ann. c.*21. § 9. to counterfeit the seals used and continued in *Scotland*, according to the 29th article of the union, is treason.

The other statutes that make forgery an offence are these that follow: —

5 Eliz. c. 14. Forging deeds, charters, writings sealed, court rolls, or wills, with intent to molest the freehold or inheritance of any.

The first is that famous statute 5 *El. c.*14. § 2. which, by an example worthy to be imitated, doth (in order to prevent confusion) repeal all former statutes against forgery. By this it is enacted, "that if any person or persons shall of his or their own imagination, or by false conspiracy or fraud with others, wittingly, subtilly, and falsely forge or make, or subtilly cause or wittingly assent to be forged or made, any false *deed*, *charter*, or *writing sealed*, *court roll*, or the *will* of any person in writing, to the intent that the state of freehold or inheritance of any person or persons of, in, or to any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person or persons of, in, or to the same, or any of them, shall or may be molested, troubled, defeated, recovered, or charged; or shall *pronounce*, *publish*, *or shew forth in evidence* any such false and forged deed, charter, writing, court roll, or will, as true, knowing the same to be false and forged as aforesaid, to the same intent; [except lawyers or attornies for their clients not being privy to the forgery, § 15.] and shall be thereof convicted either upon action or actions of forger of false deeds, to be founded upon this statute at the suit of the party grieved, or otherwise according to law; he shall pay unto the party grieved his double costs and damages, to be assessed in that court where such conviction shall be, and also shall be set upon the pillory (*a*) in some open market town or other open place, and there to have both his ears cut off, and also his nostrils to be slit and cut, and seared with a hot iron so as they may remain for a perpetual mark of his falsehood, and shall forfeit to the queen the whole issues and profits of his lands and tenements during his life, and also shall suffer perpetual imprisonment during his life," &c. *Vide Pult.* 45, 6.

§ 10. Gives power to justices of oyer and terminer, and of assize, to determine the offences.

Under this act the judges of K. B. have jurisdiction, but not justices of the peace in sessions, 1 *Hale*, 687. — *Cro. Eliz.* 87. — 2 *East's P. C.* 919.

The above stat. of *Elizabeth* has now nearly fallen into disuse since the passing of stat. 2 *G.*2. *c.*25. which extends to all deeds and wills, upon which the prosecution is easier, and the punishment capital in the first instance. 2 *East's P. C.* 919.

Forge or make] Making a second deed, and antedating it, with intent to make it take place of a former deed, is forgery within this statute. 3 *Inst.* 167.

What a false

The very making, with a fraudulent intent and without lawful

authority, of any instrument which at common law or by statute is the subject of forgery, is of itself a sufficient completion of the offence even before publication, and of consequence before any actual injury sustained; for though publication be the medium by which the intent is usually made manifest, yet it may be proved as plainly by other evidence. And by the statute law (*b*) the publication, with knowledge of the fact, is for the most part made a substantive offence. 2 *East's P. C.* 855. making or altering.

Making a fraudulent insertion, alteration, or erasure, in any material part of a true instrument, although in a letter only, and even if it be afterwards executed by another person he not knowing of the deceit; or the fraudulent application of a true signature to a false instrument for which it was not intended, or *vice versâ*; are as much forgeries as if the whole instrument had been fabricated; for any such alteration gives it a new operation. As by altering the date of a bill of exchange after acceptance, whereby the payment was accelerated. 2 *East's P. C.* 855. — *Master* v. *Miller*, 4 *T. R.* 320.

Expunging an indorsement on a bank note with a certain liquor (lemon juice) unknown to the jury, was holden to be a *rasing* within stat. 8 & 9 *W.* 3. *c.* 20. § 36. — *R* v. *Bigg*, 3 *P. Wms.* 419.

So is altering the amount of the sum for which a note, &c. is made (*e. g.* the figure of 2 to 5, or 10 to 50). *Dawson*'s case and *Teague*'s case, 2 *East's P. C.* 978, 979.

Even though the alteration be made by the addition of a cypher 0; as in *Elsworth*'s case, where the 0 being added after the figure 8, the bill which was for 8*l.* became a bill for 80*l.* *Elsworth*'s case, *York Lent Ass.* 1780, 2 *East's P. C.* 986.

Dyson Post's case, MS. C. C. R. Dyson Post was tried before *Grose J.* at *Bury* Lent assizes 1806, upon an indictment for altering a banker's promissory note for one pound, into a promissory note for ten *pound.* It was proved that the note in question was a promissory note of the *Thetford* bank, dated 5th *December*, 1803, for one pound, and that the prisoner being in possession of it, got some thin paper, like paper on which banker's notes are written, of the size of the note, and pasted it on the back of it with yeast, then cut out the word *one* in the body of the note, and the word *one* at the corner, and by removing the paper *pasted*, introduced into the place of the word *one*, the word *ten* at each part of the paper; by this means the note, which was a note for one pound, became a note importing to be a promissory note for ten *pound*, having in the body the word *ten pound*, and at the corner *£ ten*. It was then proved that on the same day, he being a butcher, paid it to a farmer *Edward Hensby* for some sheep he had purchased from him. Upon this proof it was objected by the prisoner's counsel, that upon this indictment he could not be convicted, as this was not altering or adding to, or forging a promissory note for money, it being when altered not a promissory note to pay ten *pounds* but ten *pound* in the singular number, which was ungrammatical, uncertain, and nonsense. — The learned judge left it to the jury to consider whether they believed the evidence given, and that the note was altered by the prisoner, Dyson Post's case.

(*a*) Abolished by 56 *G.* 3. *c.* 138. See title Pillory, &c.

(*b*) Though many of the cases in this chapter do not immediately belong to the particular statute under the reference to which they are placed, yet as they belong to the same subdivision of matter, they are thus introduced.

and negotiated by him as a note for ten pounds, for the purpose of defrauding, either the bankers, or *Edward Hensby* to whom it was paid, of that sum. — The prisoner was found guilty, and the question in E. T. 1806 submitted to the judges who (*absente* Ld. Ellenborough C. J.) held the conviction right.

And, upon the principle that the false making of any part of a genuine note, which may give it a greater currency, is forgery; it was holden, in a modern case, that where a note of country bankers was made payable at their house in the country, or at their banker's in *London*, and the *London* banker had failed, it was forgery to alter the name of such *London* banker to the name of another *London* banker, with whom the country bankers had made their notes payable subsequently to the failure. The judges held that the act done by the prisoner was a false making, in a circumstance material to the value of the note, and its facility of transfer, by making it payable at a *solvent* instead of an *insolvent* house. — N. B. The alteration was effected by pasting a slip of paper, bearing the words "*Ramsbottom & Co.*" over the words "*Bloxam & Co.*" in the same manner as the prosecutors had altered their re-issuable notes after the failure of the first *London* bankers, *Bloxam & Co.* *R* v. *Treble*, 2 *Taunt.* 328. — 2 *Leach*, 1040. *M.S. C.*

In *Kinder's* case, *Nottingham Sum. Ass.* 1800, *cor. Rooke, J.* it appeared that the prisoner procured a deed to be forged from *J. M.* and his son, conveying an estate for life to *Mary Kinder*, and that after the death of one of the supposed grantors, he procured the forged deed to be altered by enlarging the grantee's estate to a fee: he was convicted of forging and uttering it in the state to which it was so altered; and it was holden by all the judges that the conviction was proper; for it was no less a forgery after than before such alteration. *MS. C. C. R.*—2 *East's P. C.* 856. *S. C.*

But it is not forgery to pass for the person whose indorsement is on the bill, and thereby to obtain credit in the name of another; for in such a case it is not a false making. It is however an indictable offence within stat. 30 *G.* 2. *c.* 24. for using a false pretence. *Hevey's case, O. B. Jan.* 1782, 2 *East's P. C.* 856.

It is forgery however for a person, having the same name as the payee of a bill of exchange, and knowing that he is not the real person in whose favor it was drawn, to indorse it with intent to defraud, &c. *Mead* v. *Young*, 4 *T. R.* 29.

So making a false instrument, which is the subject of forgery, though in the name of a non-existing person, is as much a forgery as if it had been made in the name of one who is known to exist and to whom credit was due. *Anne Lewis's* case. *Fost.* 116.; and *G. Wilks's* case, *Bodmin* 1767. — 2 *East's P. C.* 957, 958.; and *Taft's* case. 2 *East's P. C.* 959.

Or subtilly cause, or willingly assent] To *cause*, is to procure or counsel one to forge; to *assent*, is to give his assent or agreement afterwards to the procurement or counsel of another; to *consent*, is to agree at the time of the procurement of counsel, and such is in law a procurer. 3 *Inst.* 169.

But Ld. *Hale* says, that an *assent* after the fact is committed makes not the party assenting guilty, or principal in the forging; but it must be a precedent or concomitant assent. 1 *Hale*, 684.

False deed, charter, or writing] It seems to be no way material,

whether a forged instrument be made in such a manner as, were it true, it would be of validity or not. 1 *Haw. c.* 70. §7. But Mr. *East*, 2 *P. C.* 948., is of opinion that this must be understood where the false instrument bears on the face of it the semblance of that for which it is counterfeited, and is not illegal in its very frame. Upon this ground it hath been adjudged that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. *R* v. *Deakins*, 1 *Sid.* 142.

So it is a capital offence within the *stat.* 2 *G.* 2. *c.* 25. to forge the last will of a person *who 's living*, and yet such an instrument never could operate as a will in contemplation of law, during the lifetime of the supposed testator. *R* v. *Coogan*, 2 *East's P. C.* 948. 1 *Leach*, 448.

Forgery of a bill of exchange on unstamped paper.

So forgery may be committed of a bill of exchange on unstamped paper. *Hawkeswood's* case, 1 *Leach*, 257. 2 *East's P. C.* 955. *Hawkeswood* being indicted for forgery of a bill of exchange, it was objected that not being stamped it was no bill of exchange by the *stat.* 22 *G.* 3. *c.* 33. and prior acts; and that this was an objection apparent upon the face of it. But as the stamp act was merely a revenue law, and did not profess in any way to alter the crime of forgery; and as the false instrument had the semblance of a bill of exchange, and was negotiated by the prisoner as such, *Buller* J., before whom he was tried, overruled the objection, but respited judgment. And in *Easter* term 1783, all the judges were of opinion that the prisoner was properly convicted; for the stamp act in saying that a bill without a stamp shall not be pleaded or given in evidence, or be available in law or equity, means only that it shall not be made use of to recover the debt; and besides the holder might get it stamped after it was made.

R. v. Morton.

The same point was afterwards ruled by all the judges in *R* v. *Morton*, (*York Sum. Ass.* 1795,) 2 *East's P. C.* 955., after the passing of the *stat.* 31 *G.* 3. *c.* 25., which prohibits the affixing of the stamp afterwards.

[Note, stat. 34 *G.* 3. *c.* 32., permitting bills or notes to be stamped after drawn is expired.]

The decision in this case also guided the determination in two other cases.

Unstamped receipt not evidence to support a charge of embezzlement under 39 G. 3. c. 85.

R. v. *Hall, Lanc. Sum. Ass.* 1821. 3 *Stark. C. N. P.* 67. Indictment against *Hall*, under stat. 39 *G.* 3. *c.* 85., for feloniously embezzling 6 bank notes, which he had received into his possession as a clerk in the employment of Messrs. *H.* and Co. of *Liverpool*, for and on account of his masters. A debtor to the prosecutors having been called as a witness for the prosecution, evidence was offered of a receipt given by the prisoner on receiving this money from the debtor. The sum received exceeded 40*s.*, and the receipt was on plain paper. It was objected for the prisoner that this receipt could not be given in evidence for want of a stamp;—for the crown it was insisted, that the revenue laws had no application to criminal cases; and *R.* v. *Pooley*, *East's P. C.*—*R.* v. *Coogan*, *East's P. C.* 948.—*R.* v. *Hawkeswood*, 1 *Leach*, *C. C.* 295.—*East's P. C.* 955., *R.* v. *Morton*, *R.* v. *Reculist*, *R.* v. *Davis.*, *ib.* (supra) were cited; but *Bayley* J. was of opinion that the receipt was not admissible in evidence for want of a stamp, and the evidence was rejected.

Mr. *Starkie*, (who was of counsel for the prisoner,) adds, the distinction between the present case, and those cited, seems to be, that in the former the offence of forgery was complete, whether the instrument was or was not stamped. No operation, therefore, was given to an unstamped instrument by receiving the forged bill or note in evidence; but in the present case the instrument offered in evidence was collateral to the principal felony, and was offered for the very purpose, for which by the stamp laws it is made unavailable; *i. e.* to prove the payment and receipt of the money.

Forged instrument to have similitude of true one.

But in these cases it is necessary that the forged instrument should in all essential parts have upon the face of it the similitude of a true one; so that it be not radically defective and illegal in the very frame of it. 2 *East's P. C.* 952.

A conviction for forging a will of *land*, attested by only two witnesses, holden wrong.

Therefore where *T. Wall* was convicted upon an indictment for forging and knowingly uttering a will of land of one *J. S.*, attested by only two witnesses, and it did not appear in evidence what estate the supposed testator had in the land so devised, or of what nature it was; it was objected that *non constat* but that the land was freehold, and therefore the will void by the express words of the statute of frauds (29 *Car.* 2. *c.* 3. § 5.) for want of the attestation of three witnesses. The judges on a conference in E. T. 1800, held the conviction wrong; for as it was not shewn to be a chattel interest, it was to be presumed to be freehold. *Wall's case, Worcester Sp. Ass.* 1800. *cor. Thomson B.* 2 *East's P. C.* 953.

So in *R.* v. *Moffatt* (*O. B. Jan.* 1787) it was decided by all the judges that forgery of a bill of exchange, as such, cannot be committed when it is drawn for more than 20*s.* and less than 5*l.* *without mentioning the place of abode of the payee, and having a subscribing witness thereto;* for want of which circumstances it is

17 G. 3. c. 30. declared by stat. 17 *G.* 3. *c.* 30. § 1. (*a*) that such a note is absolutely void. *Moffatt's case,* 2 *East's P. C.* 954.—1 *Leach,* 431. *Bayl.* 439.

Writing sealed] These are large words; and the making of a false customary of a manor in writing under seal, containing divers false customs, to the disherison of the lord of the manor, and that the same had been allowed and permitted by the lord of the manor, which was also false, was resolved to be within these words *a false writing sealed.* 3 *Inst.* 169.

Sealed] It is required that the deed, charter, or writing must be sealed, that is, have some impression upon the wax; for wax, without an impression, is not a seal. *Id.*

Court roll, or will] Here are two writings which need not be sealed, because they may take effect without any seal, for that they be no deeds; and no writing can have the force of a deed without a seal. 3 *Inst.* 170.

Will] If any person which writeth the will of a sick man inserteth a clause therein concerning the devise of lands, without any direction of the devisor, this is forgery, although he did not forge the whole will. 3 *Inst.* 170.

5 El. c. 14. *To the intent that the estate of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copy-*

(*a*) By stat. 48 G. 3. c. 88. all promissory or other notes, bills of exchange, or drafts, &c. being negociable for less than 20*s.* are declared absolutely void. See Vol. III. tit. Promissory Notes.

hold, or the right, title, or interest of any person in the same, may be molested, troubled, defeated, recovered, or charged] *R* v. *Japhet Crooke*, 2 *Str.* 901. *Fitzg.* 57. 261. 2 *East's P. C.* 921. The defendant was convicted on an indictment which stated that *Garbut* and his wife were seised in fee of certain messuages, lands, and tenements called *Jawick*, in the parish of *Clacton*, in *Essex*, and that the defendant, intending to molest them and their interest in the premises, forged a lease and release as from *Garbut* and his wife, whereby they are supposed for a valuable consideration to convey to him "all that park called *Jawick* park, in the parish of *Clackton* in *Essex*, containing eight miles in circumference, with all the deer, woods, &c. thereto belonging." It was moved in arrest of judgment that the premises supposed to be conveyed were so materially different from those which were really the estate of *Garbut* and his wife, that it was impossible this conveyance ever could molest or disturb them. But the court held, that it was not necessary that there should be a charge or a possibility of a charge, and that it was sufficient if it were done with that intent, and the jury have found that it was done with intent to molest *Garbut* and his wife in the possession of their lands. Accordingly judgment was given for the king; and the defendant had sentence to undergo the punishment appointed by the act for forging a deed, and the same was executed upon him at *Charing Cross*.

Crooke's case.

On an indictment for forgery within 5 Eliz. it is sufficient if the party may be molested in his possession, though he be not evicted; and a variance of Jawick Park for Jawick in the forged deed is not material.

Pronounce or publish] That is, when one by words or writing pronounceth or publisheth the deed to any other as true. 3 *Inst.* 171.

Knowing the same to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publish it afterwards as true, and it prove to be forged indeed, he is in danger of this statute.

But Ld. *Hale* says, that though such a relation may be an evidence of fact to prove his knowledge, yet it is not conclusive; for perchance there might be circumstances of fact that might make the person relating it, or his relation, not credible; so that the *knowing* must be upon the whole matter left to the jury, upon the circumstances of the case. 1 *Hale*, 685.

In *R* v. *Wylie* and another, at the *O. B. Apr.* 14. 1804. The prisoners were indicted for disposing of and putting away a forged bank-note, for 1*l.* knowing the same to be forged. In order to shew the knowledge of the prisoners that the note was forged, evidence was offered that the prisoners had passed other forged notes to other persons: And to this evidence the counsel for the prisoners objected, as being inadmissible; becuse they said, upon indictments for burglary or robbery, previous offences were not allowed to be given in evidence to prove the *quô animo*; nor upon an indictment for uttering bad money; and they said that the prisoners ought to have had notice of the several utterings intended to have been proved against them. Lord *Ellenborough* C. J. said that in *R.* v. *Tattershall* (tried at *Lancaster*, 1801, by Mr. J. *Chambre*) it was held by all the judges, that the jury might, from the conduct of the prisoner on one occasion, infer his knowledge on another. And he said, "I remember a case in which a person came to *Manchester* with a large parcel of forged notes; his whole demeanor afforded pregnant evidence of the mind and purpose

Upon an indictment for uttering a forged bank-note, knowing it to be forged, evidence may be given of other forged notes having been uttered by the prisoner, in order to shew his guilty knowledge.

for which he came; and a question was made whether that evidence should be received; for it was said, that it would be trying the prisoner for other utterings. But if crimes do so intermix, the court must go through the detail. I remember a case where a man committed three burglaries in one night; he took a shirt at one place, and left it at another; and they were all so connected that the court went through the history of the three burglaries. The more detached in point of time the previous utterings are, the less relation they will bear to that stated in the indictment. But in such case, the only question would be, whether the evidence was sufficient to warrant the inference of knowledge from such particular transactions? It would not make the evidence inadmissible. Such evidence may come out from these circumstances, as may leave no doubt that the prisoners must have known what sort of paper they were passing. Under the authority therefore of the decision which has already taken place, I think that it is competent for us to go into and receive evidence of another offence, and of the demeanor of the prisoners on other occasions, from which knowledge may be inferred."—*Heath* J. agreed, and said he remembered a case where several persons were tried for a conspiracy to raise wages, and evidence was received of circumstances amounting to substantive felonies, such circumstances being material to the point in issue.—*Thomson* B. agreed, and said that as to uttering of bad money, the prosecutor could give evidence of another uttering on the same day, in order to prove the knowledge. The evidence was received and the prisoners were found guilty. *Wylie's case*, 1 *N. R.* 92.—2 *Leach*, 983.

Upon an indictment for uttering a forged bank note, knowing it to be forged, evidence is admissible of the prisoner having some time before uttered another forged note of the same manufacture, and also of a number of others having been in circulation with the prisoner's hand-writing on the back.

Edward Ball was tried before *Heath* J. at *Lewes*, *Sum. Ass.* 1807, on an indictment, charging him in the first count with forging a bank of *England* promissory note for the payment of 5*l.*, with an intent to defraud the governor and company of the bank of *England*, and on another count for uttering the same, &c. The prisoner uttered the note in question on *the* 11*th of June*, 1807, and there was circumstantial evidence of his having actually forged it, which might induce an intelligent jury to find him guilty on the first count. The note was forged with a camel-hair pencil. The company's notes are struck off a copper-plate, and so are most of the forged notes that have been circulated. Evidence was then offered and admitted, that the prisoner had uttered another note forged in the same manner by the same hand and with the same materials on the 20th of *March*, 1807, and that two ten pound notes, and thirteen one pound notes of the same fabrication had been found on the files of the company, on the back of which there was the prisoner's hand-writing, which was evidence of their having been in his possession, but it did not appear when the company received them. The prisoner was found guilty, but sentence was respited for the purpose of taking the opinion of the judges as to the admissibility of this evidence. On the 14th *November*, 1807, all the judges (except *Rooke* J.) met, and the majority were of opinion that the evidence was admissible, subject to observation as to its weight, which would be more or less considerable according to the number of the other notes, the distance of time at which they were put off, and the situation in life of the prisoner, as to make it more or less probable that so many notes should pass through his hands in the course of business. *Ball's case*, *MS. C. C. R.* 1 *Camp.* 324. *S. C.*

In another case, where the prisoner was indicted for forging a promissory note (not a note of the bank of *England*) and also for uttering it, evidence was given that, in the same pocket book belonging to the prisoner in which the forged note was found, on which the indictment proceeded, there was also found another promissory note, for 100*l.* payable to the prisoner's order, appearing to be signed by one *Wm. Gapper*, which *Wm. Gapper* proved not to be his hand-writing, and that he never owed the prisoner 100*l.* This evidence of *Gapper's* note was objected to by the prisoner's counsel, but admitted; and on reference to the judges, a majority were of opinion that *Gapper* was not a competent witness. The prisoner was pardoned. *Crocker's case, Salisbury Sum. Ass.* 1805. *cor. Le Blanc, J. MS. C. C. R.* 2 *N. R.* 87. 2 *Russ.* 1515.

R. v. *Wait, H.* 1823. 1 *Bing. R.* 121. The prisoner was convicted before *Bayley* J. and *Garrow* B., at the *O. B. January Sess.* 1823, of uttering a forged power of attorney for selling stock, which was standing in the joint names of the prisoner and *John Cox*; the power imported to be executed by the prisoner and *John Cox*, and the attestation imported that it was executed in the presence of the subscribing witnesses, by the prisoner and *John Cox*. The subscribing witnesses proved that it was not executed by *Cox* in their presence; that *Cox's* signature was not upon the power when they attested it; and that they believed the words in the attestation "and *John Cox*," were added after they attested. The bank ledger was produced, according to which the stock was still standing in the prisoner's and *Cox's* names; and the party to whom the power was granted, proved, that when he applied to sell under the power he was not permitted. *Cox* was then called as a witness to prove the forgery and other points: he was objected to, but *Bayley* J. and *Garrow* B. thought him competent, and he was examined. He produced the probate of a will of *James Fitchew*, by which he gave some money to the prisoner and *Edward Naish*, in trust for *Elizabeth Fitchew*, for life; remainder to *Stephen* and *John Cox*. He proved that *Naish* refused to act; that the trust money was invested in the joint names of the prisoner and himself; that he never gave any power to sell; that the signature in his name was a forgery; and that as soon as he knew of it, viz. in three days after the date, he wrote, and sent the following letter to the accountant general of the bank.

The prisoner forged the name of J. C. to a power of attorney for selling stock, which was standing in the joint names of the prisoner and J. C. The forgery having been discovered, the stock was not sold. Held, that J. C. was a competent witness to prove the forgery.

"Sir, "*Wrington, 20th September*, 1822.

"Having received information that the bank is in possession of a power of attorney, purporting to be executed by Mr. *John Wait* and myself, for the sale of stock in the 3 *per cent.* consols, standing in our names; if such be the fact, I beg distinctly to say, I have not executed any such power, nor was I privy to its execution. I should have sent to you express, but I understand the bank have refused to proceed in the business without hearing from me; and therefore, the present mode will be sufficient to apprize you that I have not executed the power in question. I am, sir, your humble servant,

(Directed) "*John Cox*."

"The Accountant General, *Bank of England, London*."

This letter was produced by the counsel for the bank, and had upon it the country and *London* post-marks. No express evidence was given of its reaching the Accountant General, or any officer of the bank. The prisoner petitioned the crown on the ground that *John Cox* was improperly received as a witness. The case was argued in the exchequer chamber by *Campbell* for the prisoner, and *Bosanquet*, serj. for the crown. The judges delivered no opinion publicly, but the prisoner was afterwards executed.

5 Eliz. c. 14. And by the same statute 5 *El. c.* 14. § 3. it is further enacted, that if any person, upon his own head or imagination, or by false conspiration or fraud with any other, shall wittingly, subtilly, and falsely forge or mark, or cause or assent to be made and forged, any false charter, deed, or writing, to the intent that any person may have or claim any estate or interest for term of years in any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee simple, fee tail, or for term of life, lives, or years, or any obligation, or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, suit, demand, or other thing personal; or shall pronounce, publish, or give the same in evidence as true, knowing the same to be false and forged, he shall, on conviction in like manner, pay to the party double costs and damages, and be set on the pillory (*a*), and have one of his ears cut off, and be imprisoned for a year.

Obligation, or bill obligatory] The forgery of a deed of gift of mere personal chattels is not within this statute. 1 *Haw. c.* 70. § 21.

§ 6. And *if after verdict, the plaintiff shall release the judgment or execution, or suffer a discontinuance, it shall only discharge his own costs and damages, and not the other punishment.*

§ 7, 8. *If any person shall, after conviction, offend again in any of the ways above mentioned, he shall be guilty of felony, without benefit of clergy.*

Thus stood the matter upon the statute of 5 *El.* Afterwards, by many subsequent statutes (several of which were occasional only, and adapted to the particular juncture and circumstances of the time in which they were made, but which are referred to and enforced by the subsequent statutes on the same subject), divers other forgeries were made felony without benefit of clergy for the first offence; and others had other punishments assigned them. Such are these that follow:

It shall be felony without benefit of clergy to forge or counterfeit,

(1) Any bank bills or notes, or the seal of the governor and company of the bank of *England*. 7 & 8 *W.* 3. *c.* 31. § 36.—8 & 9 *W* 3. *c.* 20. § 36.—11 *G.* 1. *c.* 9. § 6.—12 *G.* 1. *c.* 32. § 9.—45 *G.* 3. *c.* 89. § 2.—1 *G.* 4. *c.* 92. (See *ante*, p. 448.)

And in general, any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the seal of the bank, or indorsement thereon; or knowingly offering to dispose thereof. 15 *G.* 2. *c.* 13. § 12.—45 *G.* 3. *c.* 89. § 2,

Stats. 13 *G.* 3. *c.* 79. and 41 *G.* 3. (*U. K.*) *c.* 39. respect the having in the possession of the party instruments for making paper with

(*a*) Vide stat. 56 G. 3. c. 138. title Pillory.

certain words concerning the bank, or to resemble the bank paper; and also the having in possession forged bank-notes, or engraving such on any plate. See also 45 *G.* 3. *c.* 89. *post*, p. 502.

Stat. 52 *G.* 3. *c.* 138. § 5 & 6. and 53 *G.* 3. *c.* 139. contain further provisions upon the same subject. See *post*, p. 505, 506.

(2) *India* bonds. 12 *G.* 1. *c.* 32. § 9.

(3) Bonds, receipts, warrants, or seal of the *South Sea* company. 9 *Ann.* *c.* 21. § 57.—6 *G.* 1. *c.* 4. § 56.—*c.* 11. § 50.—12 *G.* 1. *c.* 32. § 9.

(4) Exchequer bills; by the several acts which direct the issuing of the same. See 58 *G.* 3. *c.* 23. § 38.

(5) Any power to transfer stocks. 8 *G.* 1. *c.* 22. § 1. Or personating the owners thereof, 31 *G.* 2. *c.* 22. § 77.—4 *G.* 3. *c.* 25. § 15. Or making false entries in bank books, or false dividend warrants, 33 *G.* 3. *c.* 30.—37 *G.* 3. *c.* 122. (See 45 *G.* 3. *c.* 89. § 1. *post*, p. 502.)

(6) *Irish* annuities transferrable and payable in *England.* 37 *G.* 3. *c.* 46. and debentures, 42 *G.* 3. *c.* 58. § 20.

(7) Lottery tickets and orders by the several lottery acts. See stat. 4 *G.* 4. *c.* 60. § 11.

(8) The common seal or policies of *The London* or *Royal Assurance* companies. 6 *G.* 1. *c.* 18. § 13.

(9) The seal of the *British* cast plate glass manufactory, or any deed or writing under their common seal, &c. 13 *G.* 3. *c.* 38. § 28.—38 *G.* 3. *c.* xvii. § 23.

(10) Documents concerning money of the suitors, &c. in chancery. 12 *G.* 1. *c.* 32. § 9. See 2 *East's P. C.* 898.

(11) Seamen's wills, [letters of attorney, &c.] 55 *G.* 3. *c.* 60. § 29—33.—57 *G.* 3. *c.* 127. § 4.—1 & 2 *G.* 4. *c.* 49. § 2—4.

(12) Tickets for wages of seamen or marines. 32 *G.* 3. *c.* 33. § 23. See 2 *East's P. C.* 908.

(13) Certificates, bills of exchange, &c. used in drawing for half-pay, pensions, &c. 56 *G.* 3. *c.* 101. § 4.

(14) *Mediterranean* passes. 4 *G.* 2. *c.* 18. § 1. 2 *Russ.* 1603.

(15) Marriage licences, or registry of a marriage. 26 *G.* 2. *c.* 33. See also 52 *G.* 3. *c.* 146.

(16) Stamps on vellum, parchment, and paper, and legal writings, by the several stamp acts. *Vide* 52 *G.* 3. *c.* 143. § 7.—55 *G.* 3. *c.* 184.—55 *G.* 3. *c.* 185.

(17) Any mark, die, or plate used by the commissioners for the duties on stamped vellum, parchment, and paper, or for denoting any device for the ace of spades in any playing-cards, or forging the resemblance of such marks, stamps, &c. upon vellum, paper, card, ivory, gold or silver plate, &c. 52 *G.* 3. *c.* 143. § 7. 2 *Russ.* 1554.

(18) Plates, stamps, or dies used to denote the duties on almanacks, or the impression thereof, or stamping any paper with such forged die, or uttering such paper knowingly. 55 *G.* 3. *c.* 185. § 6.

(19) Transposing from one piece of wrought plate to another, or to base metal, any impression of a mark, stamp, or die, or selling or exporting plate or base metal with forged or transposed mark, &c., or having possession of forged mark, &c. 52 *G.* 3. *c.* 143. § 8.

(20) Stamps on linen imported. 10 *Ann.* *c.* 19. § 97.—13 *G.* 3. *c.* 56. § 5.; but within clergy by 52 *G.* 3. *c.* 143. § 1.

(21) Prefines and postfines in passing fines in C. P. 32 *G.* 2. *c.* 14. § 9.—52 *G.* 3. *c.* 143. § 5. See 2 *East's P. C.* 911.

(22) Exchequer bills, 42 *G.* 3. *c.* 1. § 41.—48 *G.* 3. *c.* 1. § 9. 2 *East's P. C.* 912.

(23) Any stamp or seal, &c. &c. of the commissioners of the excise or customs. 52 *G.* 3. *c.* 143. § 7.

(24) Excise permits, or frames for making paper with "Excise office" visible therein. 23 *G.* 3. *c.* 70. § 9, 10.—52 *G.* 3. *c.* 143. § 9.

(25) Debentures or certificates for the return of money from duties of customs or excise. 52 *G.* 3. *c.* 143. § 10.

(26) Name or hand-writing of the receiver-general of the excise, or comptroller of the excise, or person duly authorised by them, to any draft, instrument, or writing, for the receiving of money. 46 *G.* 3. *c.* 75. § 8. [But within clergy by 52 *G.* 3. *c.* 143. § 1.] 2 *Russ.* 1583.

(27) Or the receiver general of the stamp-duties, &c. 46 *G.* 3. *c.* 76. § 9.

(28) Or the surveyor general of the woods and forests. 46 *G.* 3. *c.* 142. § 14.

(29) Or the receiver general of the customs, or supervisor duly authorised. 46 *G.* 3. *c.* 150. § 10.

(30) Registers of the births or baptisms of nominees in respect of annuities. 48 *G.* 3. *c.* 142. § 27.

(31) Quarantine, orders of council. 46 *G.* 3. *c.* 98. § 8. 2 *Russ.* 1604.

(32) Drafts of the treasurer of the ordnance, or his deputy, or person duly authorised by him. 46 *G.* 3. *c.* 46. § 9.

(33) The hand of the receiver general of the post-office, his clerk, &c. 46 *G.* 3. *c.* 83. § 9.—47 *G.* 3. *sess.* 2. *c.* 59. § 3.

(34) Contracts, certificates, &c. relating to the redemption of the land-tax, &c. 42 *G* 3. *c.* 116. § 194.—52 *G.* 3. *c.* 143. § 6. See 2 *East's P. C.* 916.

(35) Transfers of funds directed to be sold by 54 *G.* 3. *c.* 70. or any receipts, warrants, &c. for dividends, monies, &c. under the provisions of that act. (§ 38.)

Making false entries in any registers of baptisms, burials, or marriages; forging, destroying, or defacing any such register, is made felony by stat. 52 *G.* 3. *c.* 146. § 14., and punishable with transportation for 14 years.

Signing false petitions to the treasurer of the navy to obtain a certificate from the inspector of seamen's wills, &c. is by 55 *G.* 3. *c.* 60. § 30. declared to be felony, and punishable with seven years' transportation.

So also forging the signature of any member or householder to a certificate to enable any person to obtain probate of any will, or letters of administration to a seaman or marine, or uttering any certificate with such false signature, knowingly, is made felony by 55 *G.* 3. *c.* 60. § 31. and punishable with transportation for life, or 14 or 7 years.

Forging the name or hand of the registrar of the court of admiralty, or of appeals for prizes, or of the cashier of the bank, to any certificate for obtaining the money or effects of the suitors in those courts, is declared to be felony by stat. 53 *G.* 3. *c.* 151. § 12.

Every person forging any declaration of return of the premium on a policy of insurance shall for the first offence forfeit 500*l.* (to be recovered in the same manner as penalties imposed by any laws relating to the stamp duties); and for the second and every other

offence, shall be adjudged guilty of felony, and be transported for seven years. 54 *G*. 3. *c*. 133. 2 *Russ*. 1612.

Stat. 24 *G*. 3. *sess*. 2. *c*. 37. § 9. made the forging of *franks* a felony, punishable by transportation for seven years; and by stat. 42 *G*. 3. *c*. 63. § 14. if any person shall forge or counterfeit the hand-writing of any person whatsoever in the superscription of any letter or packet to be sent by the post, in order to avoid the payment of the duty of postage; or shall forge, counterfeit, or alter, or procure to be forged, &c. the date upon the superscription of any such letter or packet; or shall write and send by the post, or cause to be written and sent by the post, any letter or packet, the superscription or cover whereof shall be forged or counterfeited, or the date upon such superscription or cover altered, in order to avoid the payment of the duty of postage, knowing the same to be forged, counterfeited, or altered; every person so offending, and being thereof convicted in due form of law, shall be deemed guilty of felony, and shall be transported for seven years. 2 *Russ*. 1588.

Franks.

42 G. 3. c. 63.

Forging post-office marks to avoid payment of the postage, is punishable as a misdemeanor, by fine and imprisonment, by stat. 54 *G*. 3. *c*. 169. § 14.

54 G. 3. c. 169.
55 G. 3. c. 103.

Stat. 55 *G*. 3. *c*. 103., for regulating the postage of ship letters to and from *Ireland*, contains a similar enactment as to letters thereby authorised to be marked.

And besides these and other particular laws, by stat. 2 *G*. 2. *c*. 25. made perpetual by stat. 9 *G*. 2. *c*. 18. "if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, &c., or willingly act or assist in the false making, &c. any *deed*, *will*, *testament*, *bond*, *writing obligatory*, *bill of exchange*, *promissory note* for payment of money, *indorsement* or *assignment* of any bill of exchange or promissory note for payment of money, or any acquittance or *receipt*, either for money or goods, with intent to defraud any person whatsoever, [and by stat. 31 *G*. 3. *c*. 22. § 78. with intent to defraud any corporation whatsoever]; or shall *utter or publish* as true any false, forged, or counterfeited deed, &c. with intent to defraud any person (or corporation), knowing the same to be false, forged, or counterfeited; every such person, being thereof lawfully convicted, shall be deemed guilty of felony without benefit of clergy."

Forging deeds, wills, bonds, bills, notes, acquittances, or receipts for money or goods — capital by 2 G. 2. c. 25. 9 G. 2. c. 18.

31 G. 2. c. 22.

The stat. 7 *G*. 2. *c*. 22. (made to supply the defects of the former act of 2 *G*. 2. which it recites, and reciting further that no punishment is inflicted by the said act on such as commit the offences thereinafter set forth,) enacts, that "if any person shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, &c. or willingly act or assist in the false making, &c. any *acceptance of any bill of exchange*, or the *number* or *principal sum* of any *accountable receipt for any note, bill, or other security for payment of money*, or any *warrant or order* for *payment of money*, or *delivery of goods*, with intent to defraud any person whatsoever, [and by stat. 18 *G*. 3. *c*. 18. with intent to defraud any corporation;] or shall utter or publish as true any false, altered, forged, or counterfeited acceptance of any bill of exchange, or accountable receipt for any note, bill, or other security for payment of money, or warrant or order for payment of money, or delivery of goods, with intention to defraud any person (or corporation), knowing the same to be false,

7 G. 2. c. 22.
Extending to acceptances, accountable receipts, orders for payment of money, or delivery of goods.

18 G. 3. c. 18.

altered, forged, or counterfeited; then every such person being thereof lawfully convicted, shall be deemed guilty of felony without benefit of clergy."

In stat. 7 *G.* 2. there is no express saving of corruption of blood as in the others; and by § 4. of stat. 2 *G.* 2. *c.* 25. the act was not to extend to *Scotland*: but see stat. 45 *G.* 3. *c.* 89. *infra.*

43 G. 3. c. 139. Foreign bills of exchange.

By stat. 43 *G.* 3. *c.* 139. § 1. forging *foreign* bills of exchange, promissory notes, &c. or uttering the same, is made felony, and punishable by transportation for 14 years.

Prussian treasury note.

[*R.* v. *Manassah Goldstein, H.* 2 & 3 *G.*4. 3 *B.* & *B.* 201. 7 *Moore, C. P. R.* 1.] The forgery of a *Prussian* treasury note for one dollar is within stat. 43 *G.* 3. *c.* 139. § 1. The prisoner was convicted of forging an instrument (purporting to be a *Prussian* treasury note) in a foreign language. No translation of the instrument appeared on the record, and on this ground judgment was arrested. By eight judges against two, (Wood B. and Bayley J. *absentibus*).

45 G. 3. c. 89. extends the 2 G. 2. c. 25. and 7 G. 2. c. 22. to every part of G. B., with certain alterations and amendments.

By stat. 45 *G.* 3. *c.* 89. § 1. After reciting that by the 2 *G.* 2. *c.* 25., the 7 *G.* 2. *c.* 22., and other acts, certain provisions were made for the preventing and punishing the forgery of notes, bills, instruments, &c. in those acts respectively mentioned; and that it was expedient that such provisions should extend and be in force *in every part of G. B.*, with such alterations and amendments therein as were thereby made, it is enacted, "that if any person or persons shall falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or willingly act or assist in the false making, forging, counterfeiting, or altering, any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note for payment of money, acceptance of any bill of exchange, or any acquittance or receipt either for money or goods, or any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money or delivery of goods, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall offer, dispose of, or put away any false, forged, counterfeited, or altered deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange, or promissory note for payment of money, acceptance of any bill of exchange, acquittance, or receipt, either for money or goods, accountable receipt for any note, bill, or other security for payment of money, warrant or order for payment of money or delivery of goods, with intention to defraud any person or persons, body or bodies politic or corporate, knowing the same to be false, forged, counterfeited, or altered, then every person or persons so offending, and being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy."

Forgery of bank notes, &c like punishment.

§ 2. If any person or persons shall forge, counterfeit, or alter any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the common seal of the governor and company of the bank of *England*, or any indorsement thereon, or shall offer or dispose of or put away any such forged, counterfeit, or altered note, bill, dividend warrant, bond, or obligation, or the indorsement thereon, or demand the money therein contained or pretended to be due thereon, or any part thereof, of the said com-

pany, or any their officers or servants, knowing such note, bill, dividend warrant, bond, or obligation, or the indorsement thereon, to be forged, counterfeited, or altered, with intent to defraud the said governor and company, or their successors, or any other person or persons, body or bodies politic or corporate whatsoever, every person or persons so offending, and being thereof convicted in due form of law, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy. 45 G.3. c.89.

Punishment of persons (except officers of the bank), making or having in their possession, frames for making paper of the description herein mentioned, or having in their possession such paper, to be transportation.

§ 3. If any person or persons (other than the officers, workmen, servants, or agents for the time being of the governor and company of the bank of *England*, to be authorised and appointed for that purpose by the said governor and company, and for the use of the said governor and company only) shall, from and after the passing of this act, make or use, or cause or procure to be made or used, or knowingly aid or assist in the making or using, or (without being authorised or appointed as aforesaid) shall knowingly have in his, her, or their custody or possession (without lawful excuse, the proof whereof shall lie upon the party accused) any frame, mould, or instrument for the making of paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum, or amount, expressed in a word or words in roman letters visible in the substance of such paper; or shall manufacture, make, use, vend, expose to sale, publish, or dispose of, or cause or procure to be manufactured, made, used, vended, exposed to sale, published, or disposed of, or aid or assist in the manufacturing, making, using, vending, exposing to sale, publishing, or disposing of, or (without being authorised or appointed as aforesaid) shall knowingly have in his, her, or their custody or possession, any paper whatsoever with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or having any number, sum, or amount, expressed in a word or words in roman letters appearing visible in the substance of such paper; or if any person or persons (except as before excepted) shall, by any art, mystery, or contrivance, cause or procure the numerical sum or amount of any bank note, bank bill of exchange, or bank post bill, blank bank note, blank bank bill of exchange, or blank bank post bill, in a word or words to appear visible in the substance of the paper whereon the same shall be written or printed, or shall knowingly aid or assist in causing the numerical sum or amount of any bank note, bank bill of exchange, or bank post bill, blank bank note, blank bank bill of exchange, or blank bank post bill, in a word or words in roman letters to appear visible in the substance of the paper whereon the same shall be written or printed, every person or persons so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

Not to restrain the issue or negotiation of bills having the amount expressed in guineas, or figures, denoting pounds.

§ 4. Nothing herein contained shall extend or be construed to extend, to restrain any person or persons from issuing or negotiating any bill or bills of exchange, promissory note or promissory notes, having the sum or amount thereof expressed in guineas, or in a numerical figure or figures, denominating the sum or amount thereof in pounds sterling, appearing visible on the substance of the paper upon which the same shall be written or printed; any thing herein contained to the contrary thereof in anywise notwithstanding.

45 G.3. c.89.

Persons allowed to make paper having waved lines, not being bar lines, or laying wire lines, and not imitating the paper of the bank.

§ 5. Nothing in this act contained shall restrain or prevent any person or persons from making, using, vending, exposing to sale, publishing, or disposing of any paper having waving or curved lines, or any other devices in the nature of water marks visible in the substance of the paper, not being bar lines or laying wire lines, provided the same are not contrived in such manner as to form the ground-work or texture of the paper, or to imitate or resemble the waving or curved laying wire lines or bar lines of the said paper of the governor and company of the bank of *England*, or to imitate or resemble the watermarks used by the governor and company of the bank of *England* in the bank notes, bank bills of exchange, and bank post bills, issued by the said governor and company; any thing herein contained to the contrary thereof in anywise notwithstanding.

Punishment for purchasing or receiving forged bank notes, &c. to be transportation.

§ 6. If any person or person shall, from and after the passing of this act, purchase or receive from any other person or persons any forged or counterfeited bank note, bank bill of exchange, bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged or counterfeited, or shall knowingly or wittingly have in his, her, or their possession or custody, or in his, her, or their dwelling-house, outhouse, lodgings, or apartments, any forged or counterfeited bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged or counterfeited (without lawful excuse, the proof whereof shall lie upon the person accused), every person or persons so offending, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of 14 years.

Punishment of persons engraving, &c. on any plate, any bank note, or part thereof, or using any such plate, without the authority of the bank, to be transportation.

§ 7. If any person or persons, from and after the passing of this act, shall engrave, cut, etch, scrape, or by any other means or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other means or device made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other means or device, making, in or upon any plate of copper, brass, steel, pewter, or of any other metal or mixture of metals, or upon any wood or any other materials, or any plate whatsoever, any bank note, bank bill of exchange, bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, or part of a bank note, bank bill of exchange, or bank post bill, purporting to be the note, or bill of exchange, or bank post bill, or blank bank note, or blank bank bill of exchange, or blank bank post bill, or part of the note, or bill of exchange, or bank post bill of the governor and company of the bank of *England*, without an authority in writing for that purpose from the said governor and company of the bank of *England*; or shall use any such plate so engraved, cut, etched, scraped, or by any other means or device made, or shall use any other instrument or device for the making or printing any such bank note, bank bill of exchange, or bank post bill, or blank bank note, or blank bank bill of exchange, or blank bank post bill, or part of a bank note, or bank bill of exchange, or bank post bill, without such authority in writing as aforesaid; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, knowingly have in his, her, or their custody, any such plate, in-

strument, or device, or shall, without such authority as aforesaid, knowingly and wilfully utter, publish, dispose of, or put away any such blank bank note, blank bank bill of exchange, or blank bank post bill, or part of such bank note, bank bill of exchange, or bank post bill, every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of 14 years. 45 G.3. c.89.

§ 8. All the clauses and provisions in this act shall extend, and be construed to extend, by all courts, judges, and magistrates whatsoever to every part of *G. B.* Provisions to extend to every part of Great Britain.

By stat. 52 *G.*3. *c.*138. § 5 For the further prevention of frauds practised by the imitation of the notes and bills of the bank of *England*, it is enacted, "that if any person shall engrave, cut, etch, scrape, or by any other means or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other means or device made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other means or device making, in or upon any plate of copper, brass, steel, pewter, or of any other metal or mixture of metals, or upon wood or any other materials, or upon any plate whatsoever, any word or words, figure or figures, character or characters, the impression taken from which shall resemble or be apparently intended to resemble the whole or any part of any of the notes or bills of the said governor and company commonly called *bank notes* and *bank post bills*, or shall contain any word, number, figure, or character in white on a black, sable, or dark ground, without an authority in writing for that purpose from the said governor and company, to be produced and proved by the party accused, or shall (without such authority as aforesaid) use any such plate, wood, or other material so engraved, cut, etched, scraped, or by any other means or device made, or shall use any other instrument or device for the making or printing upon any paper or other material, any word or words, figure or figures, character or characters, which shall be apparently intended to resemble the whole or any part of any of the said notes or bills of the said governor and company, or any word, number, figure, or character in white on a black, sable, or dark ground; or if any person or persons shall, (without such authority as aforesaid) knowingly have in his, her, or their custody, any such plate, instrument, or device, or shall knowingly and wilfully utter, publish, or dispose of or put away any paper or other material containing any such word or words, figure or figures, character or characters as aforesaid, or shall knowingly or wittingly have in his, her, or their custody or possession, any paper or other material containing any such word or words, figure or figures, character or characters as aforesaid, (without lawful excuse, the proof whereof shall lie upon the person accused), every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years. 2 *Russ.* 1543.

52 G.3. c.138. If any person shall engrave, &c. upon any plate, wood, &c. any words, &c. the impression from which shall resemble bank notes or bank post bills, or shall contain any words, &c. in white on a dark ground (without authority), or shall use any such plate, &c. or knowingly have in custody any such plate, &c. or knowingly utter or have in possession any paper or other material containing such words, &c. such offender shall be adjudged a felon, and transported for 14 years.

§ 6. Nothing in this act contained shall apply to any paper or writing whatsoever (other than papers or writings resembling such notes or bills as aforesaid), containing an impression from any plate or plates, or other device whatsoever, with white letters upon black, sable, or dark ground, which shall previous to the passing of

Act not to apply to paper herein described.

this act have been in the custody of any person or persons whatsoever.

53 G.3. c.139. Persons not liable to prosecution under recited act for having engraved, &c. notes, &c. resembling those of bank of England, before passing of act, nor within a certain period.

By 53 *G.3. c.*139. after reciting 52 *G.3. c.*138. and that bankers had in ignorance of its provisions made and issued notes, containing white letters or figures on a dark ground, and that it was expedient to give a reasonable time to them to call in such notes, and to issue others, it is enacted, that no person shall be prosecuted under this act for having before the 53 *G.3. c.*139. engraved, &c. by authority of any persons acting as bankers, any note, &c. the impression taken from which might contain any word, &c. in white on a dark ground, or for having made or printed by such authority, before the passing of the 53 *G.3. c.*139. any such note, &c. or issued, or had the same in their possession, or who shall before the 1st of *November* 1816, issue or have in their possession, any such note, the date whereof shall not be later than the 1st of *November* 1813. Provided that nothing herein contained, shall repeal or suspend any provision of this act respecting the engraving, &c. any words, &c. the impression taken from which might resemble bank of *England* notes, or post bills, or the using any plate or other material, upon which any such word, &c. might be engraved, &c. or the using any other instrument or device for making or printing any such word, &c. or the having any such plate, instrument, or device in possession, or the uttering, &c. or having in possession any paper or other material containing any such word, &c.: Provided also, that nothing herein contained shall repeal or suspend any enactment, &c. contained in stat. 13 *G.3. c.*79.

1 G.4. c.92. Punishment of persons engraving, &c. on any plate for producing an impression of all or any part of a bank note of the bank of England, without authority;

By stat. 1 *G.*4. c.92. It is enacted, "that from and after the passing of this act [24th July 1820], if any person or persons (other than the officers, workmen, servants, and agents for the time being of the said governor and company, to be authorised and appointed for that purpose by the said governor and company, and for the use of the said governor and company only) shall engrave, cut, etch, scrape, or by any other art, means, or device make, or shall cause or procure to be engraved, cut, etched, scraped,. or by any other art, means, or device made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other art, means, or device, making, in or upon any plate of copper, brass, steel, iron, pewter, or of any other metal or mixtures of metal, or upon wood or other materials, or any plate whatsoever, for the purpose of producing a print or impression of all or any part or parts of a bank note, or of a blank bank note, of the said governor and company, of the description aforesaid, without an authority in writing from the said governor and company; or shall use any such plate so engraved, cut, etched, scraped, or by any other art, means, or device made, or shall use any other instrument or contrivance for the making or printing any such bank note or blank bank note, or part of a bank note of the description aforesaid; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, knowingly and without lawful excuse have in his, her, or their custody any such plate or instrument, or without such authority as aforesaid, shall knowingly or wilfully utter, publish, dispose of, or put away any such blank bank note, or part of such bank note, of the description aforesaid, every person so offending in any of the

or using such plate;

or having such plate in custody; or uttering any impression from it;

cases aforesaid, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years." 1 G.4. c.92.

Transportation for 14 years.

Punishment of persons engraving, &c. on any plate any resemblance of the ground work of a bank note of the bank of England, without the authority of the bank;

§ 2. "If any person or persons, from and after the passing of this act, shall engrave, cut, etch, scrape, or by any other art, means, or device, make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other art, means, or contrivance made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other art, means, or contrivance making, in or upon any plate of copper, brass, steel, iron, pewter, or of any other metal or mixture of metals, or upon wood, or any other materials, or upon any plate whatsoever, any line work, as or for the ground work of a promissory note or bill of exchange, the impression taken from which line work shall be intended to resemble the ground work of a bank note of the said governor and company of the description aforesaid, or any device the impression taken from which shall contain the words 'Bank of *England*,' in white letters upon a black, sable, or dark ground, either with or without white or other lines therein, or shall contain in any part thereof the numerical sum or amount of any promissory note or bill of exchange in black and red register work, or shall show the reversed contents of a promissory note or bill of exchange, or of any part of a promissory note or bill of exchange, or shall contain any word or words, figure or figures, character, or characters, pattern or patterns, which shall be intended to resemble the whole or any part of the matter or ornaments of any bank note of the description aforesaid, or shall contain any word, number, figure or character, in white on a black, sable, or dark ground, either with or without white or other lines therein, which shall be intended to resemble the numerical sum or amount in the margin, or any other part of any bank note of the said governor and company, without an authority in writing for that purpose from the said governor and company, to be produced and proved by the party accused; or if any person or persons shall, from and after the passing of this act, (without such authority as aforesaid), use any such plate, wood, or other material so engraved, cut, etched, scraped, or by any other art, means, or contrivance made, or shall use any other instrument, or contrivance for the making or printing upon any paper or other material, any word or words, figure or figures, character or characters, pattern or patterns, which shall be intended to resemble the whole or any part of the matter or ornaments of any such note of the said governor and company, of the description aforesaid, or any word, figure, or character, in white on a black, sable, or dark ground, either with or without white or other lines therein, which shall be apparently intended to resemble the numerical sum or amount in the margin, or any other part of any bank note of the said governor and company; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, knowingly have in his, her, or their custody or possession, any such plate or instrument, or shall knowingly and wilfully utter, publish, or dispose of, or put away any paper or other material containing any such word or words, figure or figures, character or characters, pattern or patterns, as aforesaid, or shall knowingly or willingly have in his, her, or their custody or possession, any paper or other material containing any such

or using such plate;

or having such plate in possession; or uttering any impression from it;

1 G.4. c.92.

Transportation for 14 years.

word or words, figure or figures, character or characters, pattern or patterns as aforesaid, (without lawful excuse, the proof whereof shall lie upon the person accused), every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years."

Bank may cause an impression to be made upon the notes by machinery in lieu of signatures.

§ 3. All bank notes of the said governor and company of the description aforesaid, whereon the name or names of any person or persons intrusted or authorised to sign such notes on behalf of the said governor and company, shall or may be impressed by machinery provided for that purpose by the said governor and company, and with the authority of the said governor and company, shall be and be taken to be good and valid to all intents and purposes, as if such notes had been subscribed in the proper handwriting of the person or persons intrusted or authorised by the said governor and company to sign the same respectively, and shall be deemed and taken to be bank notes within the meaning of all laws and statutes whatsoever, and shall and may be described as bank notes in all indictments and other criminal and civil proceedings whatsoever.

41 G.3. (U.K.) c.57. Bankers' notes, &c.

By stat. 41 *G.* 3. [*U. K.*] *c.* 57. § 1. If any person shall make or use any frame or mould for making paper, with the name, or firm, visible in the substance, of any person carrying on the business of bankers, without authority, or shall manufacture, make, vend, or expose to sale, publish or dispose of, any such paper, or cause or procure the same, or if any such person without such authority shall by any art, means, mystery, or contrivance, cause, or assist in causing, the name or firm to appear visible in the substance of any paper, every person so offending, and convicted thereof, shall for the first offence be imprisoned for not exceeding two years, nor less than six months, and for the second be transported for seven years.

§ 2. If any person shall engrave, cut, etch, scrape, or by any other means or device make, or cause or procure to be engraved, &c. or assist in the engraving, &c. in or upon any plate whatsoever, any bill of exchange, promissory note, or other note, or part thereof, purporting to be the bill or note of any persons carrying on the business of bankers, without authority in writing, or shall use any such plate so engraved, &c. or use any other device for the making or printing any such bill or note, without such authority; or if any person shall without such authority knowingly have in his custody any such plate or device, or shall without such authority knowingly publish, dispose of, or put away any such bill or note or part thereof, any person so offending, being convicted, shall for the first offence be imprisoned for not exceeding two years, nor less than six months, and for the second offence be transported for seven years.

§ 3. If any person shall engrave, cut, etch, or by any other means or contrivance trace with a hair stroke or other mode of delineation, on any plate whatsoever, any of the subscriptions subjoined to any bill of exchange, promissory or other note, of any persons carrying on the business of bankers, payable to bearer on demand, or shall have in his possession such plate, and shall not be able to prove that such plate came into his possession without his knowledge or consent, every person so offending,

being convicted thereof, shall for the first offence be imprisoned for not exceeding three years nor less than twelve months, and for the second be transported for seven years.

41 G.3. (U.K.) c.57.

" *Any deed.*"] See *Kinder's* case, *ante*, p. 492.

" *Bill of exchange.*"] *Josiah Chisholm* was convicted for forging a *certain bill of exchange* in the following form:

A bill drawn upon the commissioners of the navy held to be a bill of exchange within 2 G.2. c.25.

" 3d rate *Robert Gore*.

Entered 13th day of *May* 1814.

	£	s.	d.
Full pay from 13th day of *May* 1814, to 4th day of *August* 1814 - - - -	25	4	0
Amount of deductions - - - - -	2	17	3
Net pay - -	22	6	9

Gentlemen, 8th day of *August* 1814.

Ten days after sight, please to pay to Mrs. *Eliza[th]*. *Coall* or Order the sum of twenty-two pounds six shillings and ninepence, being the nett personal pay due to me as act[g] lieutenant of his Majesty's ship Zealous, between thirteenth day of *May* 1814 and fourth day of *August* 1814, for value received

Rob[t]. Gore.

Approved.

T. Boys, captain of H. M. S. *Zealous*.

To the commissioners of his Majesty's Navy, *London*."

With intent to defraud *Elizabeth Coall*, widow, against the statute, &c. The second count was for uttering, &c. with the like intention, and the third and fourth counts were similar; only laying the intention to be to defraud his majesty. There were four other counts framed upon the statute 35 *G*.3. *c*.94. § 3. & 34., but the counsel for the prosecution had admitted that those counts could not be supported; and they contended that the instrument was a bill of exchange within the 2 *G*.2. *c*.25. It was urged, on behalf of the prisoner, that it appeared clearly, that the instrument was intended to be a bill under the 35 *G*.3. *c*.94. § 3.; that it was not drawn to be presented for acceptance or payment by the commissioners of the navy, as a bill of exchange, but in order to procure an assignment of it according to the 15th section of that statute; that it was not a bill of exchange, because it was not drawn on any person bound to accept or pay it; and that the commissioners of the navy were removable at pleasure, and might be changed between the drawing and presenting of the bill. On the other hand, it was contended, that the intention with which this instrument was made was not material; and that it was not necessary, to constitute a bill of exchange for this purpose, that the parties on whom it was drawn should be liable to accept, or even be existing persons; and that it was enough if the instrument purported to be drawn on a person or persons to whom it might be presented. The learned judge respited sentence, in order that the question might be submitted to the judges whether this instrument was properly described as a bill of exchange. The conviction was confirmed and the prisoner afterwards re-

ceived sentence of death and was executed. *Chisholm's case, Exeter Sp. Ass.* 1815. *cor. Dampier J. M. S. C. C. R.*

A promissory note may be a valid note and the subject of forgery though not negotiable, and though it add to the names of the payees a description by a character to which they are not by law entitled.

" *Promissory note for payment of money.*"] It is not necessary that a promissory note should be in itself *negotiable,* in order to make it the subject of an indictment for forgery, within the 2 *G.* 2. *c.* 25. This point was decided by the judges in the following case.

Box's case, O. B. Apr. Sess. 1815. *Cor. Chambre, J. MS. C. C. R.* 6 *Taunt.* 325. 2 *Russ.* 1628. *Bayley on Bills,* 29. Josiah Box was convicted on an indictment for forging a promissory note which was as follows:

> " On demand, we promise to pay Mesdames *Sarah Waller* and *Sarah Doubtfire,* stewardesses for the time being of the *Provident Daughters Society,* held at Mr. *Pope's,* the *Hope, Smithfield,* or the r successors in office, sixty-four pounds, with five per cent. interest for the same; value received, this 7th day of *Feby.* 1815.
>
> " For *Felix Calvert & Co.*
>
> £64. *John Forster.*"

It was objected, in arrest of judgment, that this was not a promissory note, and the case was argued before the twelve judges. Their opinion was delivered by *Le Blanc* J. at the *O. B. May* sess., 1815, to the following effect. — " An objection was taken in arrest of judgment, and argued before all the judges, that the instrument in question, such as it is stated in the indictment, was not a promissory note within the statute, so as to be the subject of an indictment for forging, or uttering it, knowing it to be forged. The objection to this instrument was founded on this circumstance, that it appears to be made payable to two ladies, describing them as stewardesses of a provident society, or their successors in office; and that, this society not being enrolled according to the statute, this note was not capable to enure to their successors, and was not negotiable. The judges are of opinion that this is, as stated on the indictment, a valid promissory note within the statute of *G.* 2. *It is not necessary that such a note should be in itself negotiable;* it is sufficient that it should be a note for the certain payment of a sum of money, whether negotiable or not. And though these ladies were not at the time legally stewardesses, yet it was a description by which they were known at the time; and though they could not legally have successors in office, yet, in case of their decease, their executors and administrators might sue, and they themselves, during their life, might recover on it. Therefore, it is an instrument capable of being the subject of forgery, and there is no ground to arrest the judgment; and the judges are all of opinion that the conviction is right." The prisoner was executed.

Acceptance to a Bill of Exchange.

Rex v. Watts.

The prisoner having promised in payment for some goods an acceptance

REX v. *Thomas Watts.* In the *Exchequer Chamber, H.* 2 & 3 *G.* 4. *MS. C.C.R.* 3 *Brod. & Bing.* 197. *S. C.* The prisoner was tried before *Best* J., at the last assizes for *Devon.* The first count of the indictment was for forging at *East Stonehouse,* on 6th *April,* 1821, an acceptance by Messrs. *Williams & Co.* to a certain bill of exchange, as follows, viz.:

No. 117. £200. March 28th,
Swansea Bank, 1821.
Two Months after date pay to Mr. John Tipper, or order,
Two hundred Pounds,
To Messrs. Williams & Co. for value received,
Bankers, Birchin-lane,
3. London. Hy. Williams & Co.

Rex v. Watts. — by a London banker, gave a bill addressed to, and purporting to be accepted by, *Williams & Co.*, No. 3, *Birchin-lane, London*; it was proved that *Williams, Burgess, & Co.* of No. 20, *Birchin-lane*, had not accepted the bill, and that no other bankers of the name of *Williams & Co.* were known in *London*, but no evidence was adduced to shew that *Williams & Co.* of No. 3, *Birchin lane*, had not accepted the bill: Held, that there was no forgery proved against the prisoner, by ten judges against one. *Bayley* J. *absente.*

with intent to defraud one *Thomas Baylis*, *John Routledge*, and *Jonathan Ramsay*. The second count was for *uttering and publishing*, as true, the said forged acceptance on the said bill of exchange, knowing the same to be forged with a like intent.

He was acquitted on the first, and convicted on the second count.

It was proved, that, in *April* last, the prisoner purchased of the prosecutors wheat to the amount of 240*l*. At the time he made the purchase, he agreed to pay by the acceptance of a *London banker*. Before the wheat was delivered to him he produced to the prosecutors a bill in these words and figures:

No. 117. £200. March 28th,
Swansea Bank, 1821.
Two Months after date pay to Mr. John Tipper, or order,
Two hundred Pounds, for value received,
To Messrs. Williams & Co.
Bankers, 3, Birchin-lane, H. Williams & Co.
3. London.
[Across the face: Accepted, Williams & Co.]

He was asked how he proposed to pay the remainder of the money, and said he would draw on the same bankers for the balance. He then drew the following bill in the prosecutor's counting-house:—

£40. South Tawton, April 6th, 1821.
Two Months after date, pay to our order Forty Pounds
value received, as advised by
Swansea Bank. Thomas Watts,
To Messrs. Williams & Co.
Bankers, Birchin-lane, for P. Watts & Co.
3. London.
[Across the face: Accepted, Williams & Co.]

He said he would send this bill to *London*, to get it accepted. It was afterwards sent back to the prosecutors, accepted, as it now appears. Whilst he was drawing the bill, one of the prosecutors asked him if *Williams & Co.*, the acceptors, were *Williams, Burgess, & Co.* The prisoner said the acceptors were *Williams, Burgess, & Co.* Prosecutor said it was improbable there should be two firms of the same name in the same street, and prisoner answered it was improbable. The figure 3., which stands between the word *Bankers* and *Birchin-lane*, in the 200*l*. bill, was not then on the bill. The witnesses did not observe whether the

Rex v. Watts.

Acceptance to a bill of exchange.

small figure 3, in the corner, was on the bill at this time. It appeared to a witness acquainted with bills not to be a part of the address, but was like a figure that the holders of bills sometimes put on them before they leave them for acceptance. But the person who presented this bill had not observed whether it was on the bill when he presented it for payment, or not. A person to whom he presented the bill at the house, No. 3., *Birckin-lane*, took this bill behind a desk, and had an opportunity of writing on it one or both these figures. But the person who presented it did not observe, when he received the bill back, whether either of these figures were then on it. There are *London bankers* at No. 20, *Birchin-lane*, of the names of *Williams, Burgess, & Co.*, who usually accept bills in the form of *Williams & Co.* This bill was not accepted by that firm. No other bankers of the names of *Williams & Co.* were known to carry on business in *Birchin-lane*, nor were there any other *London* bankers under that firm. The words "*Williams & Co.*" were on a brass plate, on the door of No. 3. There was no evidence to shew by whom these bills were accepted.

The prisoner proved that three bills, in the following form, had been paid at No. 3, *Birchin-lane*, viz.:

No. 345. £30. *South Tawton, March 5th,* 1821.

Two months after date pay to our order Thirty Pounds, for value received.

Messrs. Williams & Co.
Bankers,
Swansea.

Accepted, Messrs. Williams & Co. Payable at No. 3, Birchin-lane, London.

Thomas Watts,
for P. Watts & Co.

Best J. left it to the jury to say, whether the acceptance of the 200*l*. bill was the acceptance of any *London bankers*.

The question for the opinion of the judges was, whether the prisoner was properly convicted? There was also a further question, (viz.) Whether, considering the manner in which the bill is stated in the indictment, it was necessary for the prosecutors to prove that the 3. in the corner was on the bill when it was tendered in payment?— *Williams C. F.* for the prisoner. No evidence has been adduced to shew that the acceptance which the prisoner is charged with having forged, was not the acceptance of those persons whose acceptance it purports to be; namely, the acceptance of *Williams & Co.*, of No. 3., *Birchin-lane*; if the acceptance was written by them, the circumstance of their not being bankers would not render the prisoner guilty of a forgery. The jury, indeed, have found that he did not forge the acceptance, and even wilful misrepresentation made after uttering a bill will not render that a forgery which was not so at the time when the bill was drawn. — *Rex* v. *Webb* (*a*). *Walker's case,* 2 *Russ.* 1420. *Hevey's case,* 2 *East's P. C.* 856.

Uttering a bill addressed to a

(*a*) *Rex* v. *Webb, in the Exch. Chamb. Nov.* 13, 1819. *MS. C. C. R.* 3 *Brod. & Bing.* 228. *S. C.* The prisoner was tried before Best J. at the last *Wiltshire*

Secondly, there is a variance in the setting out of the bill on record, no evidence having shewn that the bill, when uttered, con-

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Rex v. Watts.

Acceptance to a bill of exchange.

man by a particular description and addition, with an acceptance thereon by a man of the same name, but not of that description or addition, will not be capital if there be no man answering that description or addition, and no false name be assumed.

MS. C.C.R.

Assizes. The indictment charged him with feloniously forging and counterfeiting a certain bill of exchange, as follows:

£154. 9s. 0d.

Wilton, Wilts, Dec. 21*st*, 1818.

Two Months after date, pay to my order one hundred and fifty-four pounds nine shillings, for value received and balance of account.

Accepted, Thos. Bowden. Payable, when due, at No. 40. Castle-Street, Holborn, London.

John Webb.

To Mr. Thos. Bowden,

Baize Manufacturer,

Romford, Essex.

With intention to defraud *Wadham Lock, William Hughes*, and *Henry Saunders*, against the statute, &c. The second count was for feloniously uttering and publishing the same as true, with the like intention. The third count was for forging an acceptance (setting out the acceptance as above), with the like intention. And the fourth count was for uttering and publishing the said acceptance with the like intention. It was proved, on the part of the prosecution, that no *Thomas Bowden* (the person appearing on the bill to be the acceptor) lived at No. 40. *Castle-Street, Holborn;* and that no such person ever resided or carried on business, or was ever heard of at *Romford*, in *Essex;* and that there is no baize manufactury in *Romford*. On the part of the prisoner, it was proved by a witness, who stated himself to have been a partner in business with *Thomas Bowden* (the acceptor), that the acceptance was the hand-writing of *Thomas Bowden*. This witness, on his cross-examination, said, that *Bowden* never carried on the business of a baize manufacturer at *Romford*, and that the prisoner had known *Bowden* many years. Another witness said he knew *Bowden*, and that the acceptance was his hand-writing. This second witness said, that he kept the house) No. 40. *Castle-Street, Holborn*, (the place where the bill is made payable,) and that he was surprised at *Bowden*'s accepting the bill made payable at No. 40. *Castle-Street, Holborn*, as he did not reside there, and had no authority from the witness to make any bill payable at that house. *Best* J. desired the jury, first, to consider whether there was any such person as *Thomas Bowden*, and if there was, whether the acceptance was his. The learned judge told them, if there was no such person, or the acceptance was not his, and the prisoner, at the time he offered the bill to the prosecutors, knew either that there was no such person, or, if there was, that he had not accepted it, they should find him guilty, and further directed the jury, if they thought the acceptance was *Bowden*'s writing, to find whether he ever lived at *Romford*, or carried on the business of a baize manufacturer there; and told them that, if they thought *Bowden* never lived at *Romford*, or carried on any manufactory there; and that the prisoner, who appeared from the evidence to be acquainted with him, knew that, on addressing the bill to *Bowden*, as baize manufacturer, at *Romford*, he was giving him a false description, for the fraudulent purpose of giving credit to the bill, they should find him guilty; and that the judge would submit the propriety of the conviction under these circumstances to the Judges. The jury found, that there was no such person as *Thomas Bowden*. *Best* J. thought that there was such a person, and that the acceptance was his hand-writing, and wished therefore for the opinion of the judges, whether, assuming that the acceptance was the hand-writing of *Bowden*, the prisoner, by the giving, on the face of the bill, *Bowden* a false description, and uttering the bill after it was accepted by *Bowden* with this false description, with intent to defraud, brought himself within any of the counts of the indictment against him. Eleven

Rex v. Watts.

tained the figure three stated on the record. Thirdly, it ought not, for the reason before stated, to have been left to the jury, whether or no this was an acceptance by *London* bankers.—For the crown, the cases of *Mead* v. *Young*, (4 *T. R.* 28.) and *Parkes'* and *Brown's* case (2 *Leach*, 775. 2 *East's P. C.* 963.) were cited as in point.—No judgment was given, but the prisoner received a free pardon. Eleven judges were present, of whom ten were of opinion that this case did not amount to forgery. They gave no opinion upon the point at variance, their judgment on the first point rendering that unnecessary. *Bayley* J. was absent at chambers. 3 *Brod. & Bing.* 201.

Receipts.

Receipt for money] *W. Testick* was indicted (*Bodmin Sum. Ass.* 1774. 2 *East's P. C.* 925. 2 *Russ.* 1629.) for uttering and publishing as true a forged *receipt for money*, with the name *S. W.* &c., for 1*l.* 4*s.* which was as follows; *viz.*

"Received the contents above, by me," &c. is a sufficient statement of a receipt in an indictment.

"18th *March*, 1773.
"Received the contents above, *by* me,
"*Stephen Withers.*"

With intent to defraud *R. Goadby*, &c. It appeared that the prisoner was employed by *Goadby*, who sold lottery tickets and shares, and paid the money for prizes to settle an account with *S. Withers;* that a precise account in writing was given by *Goadby* to the prisoner, in which there was a balance of 1*l.* 4*s.* due to *Withers*, with the money to pay that balance; that the prisoner afterwards, on settling his accounts with *Goadby*, produced this very account, together with the receipt stated in the indictment, which was not signed by *Withers*, and took credit for the amount, knowing that *Withers* had not been paid. It was objected that this receipt did not correspond with the indictment, which should have contained the bill as well as the receipt; and that the receipt, as set forth, of "the contents above" did not appear to be a receipt for the bill in question, or to be a receipt for money. After conviction judgment was respited; but in *Mich.* T., 1774, the judges were of opinion that the indictment was sufficient, for it was, "*Received the contents above,*" which shewed it to be a receipt for something, though the particulars were not expressed; it was laid to be a *forged receipt for money* under the hand of *S. W.* for 1*l.* 4*s.* 0*d.*, and the bill itself was only evidence of the fact, and shewed it to be a receipt *for money* as charged.

But in the case of *W. Hunter* (*E.* T., 1796,) who was indicted for forging a receipt to an assignment for payment of a certain sum in a navy bill, the judgment was arrested, because it did not appear on the face of the instrument, nor was shewn by any averment, that the instrument was a receipt for money. *R.* v. *Hunter*, 2 *Leach*, 624. 2 *East's P. C.* 928.

In *Lyon's* case it was ruled by all the judges, that a scrip receipt not filled up with the name of the subscriber, or person from whom the money was received, is not a receipt for money within the statutes. *Lyon's case*, 2 *East's P. C.* 933.

A person who makes a copy of a receipt, interpolating the words "*in full of all demands,*" and produces such false copy upon

of the Judges (*Best* J. being at chambers) were of opinion, that this case did not fall within the decision of *Parkes'* and *Brown's case*, 2 *East's P. C.* 963. *S. C.* 2 *Leach*, 775.; but that, though a gross fraud, it was no forgery.

a suggestion of the loss of the original, is guilty of forgery. *Upfold* v. *Leit*, Sitt. after H. T., 1804, *cor.* Ld. *Ellenborough* C. J. 5 *Esp.* 100.

As to producing unstamped receipts in support of a charge of felony founded thereon, see *R.* v. *Hall*, 3 *Stark.* 67., *ante*, p. 494.

Order for payment of money or delivery of goods.

Warrant or order for payment of money or delivery of goods.] If the *warrant* or *order*, mentioned in stat. 7 *G.* 2. *c.* 22., do not purport, on the face of it, nor be shewn by a proper averment, to be made by a person having authority to command the payment of the money, or direct the delivery of the goods, but only amounts to a request to advance the money or supply the goods on the credit of the party applying, it is not a warrant or order within the statute. 2 *East's P. C.* 936.—2 *Leach*, 597. See also *Reeves's case*, 2 *Leach*, 808.

Mary Mitchell was indicted for publishing and uttering this forged warrant and order: " Mr. *Jeffereys*, I desire you to let this woman have six yards of ordinary stuff, one pair of stockings, one shift, one apron, one handkerchief, and I will see it all paid for. Witness my hand, *G. May*:" with intent to defraud *W. Jeffereys*. The prisoner pretending to be entitled to parochial relief, went to *Jeffereys*'s shop with the order, saying she had brought it from *May*, the overseer of the poor, and desiring him to let her have the articles on the credit of it. After conviction judgment was respited; and nine of the judges, on a conference in *July*, 1754, were clearly of opinion that the writing was not a warrant or order for the delivery of goods within the statute; considering that the words " *warrant or order*," as they stand in the act, are synonymous, and import that the person giving such warrant or order has or at least claims an interest in the money or goods which are the subject-matter of it, and has or at least assumes to have a disposing power over them, and takes on him to transfer the property, or at least the custody of them, to the person in whose favour such warrant is made. And though this case must fall within the mischief, yet in the construction of an act so penal the strict letter of it ought not to be departed from. *Mitchell's case*, *Fost.* 119. 2 *East's P. C.* 936. 2 *Russ.* 1641.

On the authority of *Mitchell*'s case, it was determined in *Williams*'s case that a note to a tradesman requesting him to let the bearer have certain goods, is not within the statute, though most of the judges said they should have doubted the propriety of the former case had it been *res integra*; but it having been so long acquiesced in, they thought it could not be departed from. *Williams's case*, 1775.—1 *Leach*, 114.—2 *East's P. C.* 937.

Accordingly in *Ellor*'s case, a note in the following form,— " Messrs. *Songer*, please to send 10*l.* by the bearer, as I am so ill, I cannot wait on you, *Eliz. Wery*," was holden not to be an order within the statute. The prisoner was therefore acquitted of the felony, but detained, and at a subsequent sessions convicted of a misdemeanor. *Ellor's case*, *O. B.*, 1784.—1 *Leach*, 323.—2 *East's P. C.* 938.

In *Clinch*'s case it was holden that an order of this kind ought to be directed to some person in particular, and it ought to appear that the person, whose name is subscribed to the order, had an authority to make it. *Clinch's case*, *O. B.* 1791.—1 *Leach*, 540.

But if it purport to be an order which the party has a right to

A forged order on a banker for payment of money, purporting to be made by one who kept cash with him, is within the statute, though made in a fictitious name, or in the name of one who had no authority to draw on him.

make, although in truth he has no such right, and though no such person exists as he who is supposed to have made it, it comes within the statute.

C. Lockett was convicted of knowingly uttering a forged order for the payment of money in these words: "Messrs. *Neale, Fordyce,* and *Down,* pay to *Wm. Hopwood,* or bearer, 16*l.* 10*s.* 6*d.* *R. Vennest;*" with intent to defraud *John Scoles.* The prisoner applied to *Scoles,* a colourman, and agreed to purchase goods to the amount of 10*l.* 0*s.* 6*d.* which he was to send for; and he took away with him a little Prussian blue. He came again, pretending to be in a hurry, and presented this note, which he said was a good one; and *Scoles* gave him 6*l.* 10*s.*, being the difference. No such person as *R. Vennest* kept cash at Messrs. *Neale* and Co's., nor did it appear that there was any such man existing. The question submitted to the judges was, whether this were an order within the statute, being the name of a fictitious person? the doubt arising on what is said in *Mitchell's* case. The judges, after very long consideration, at last agreed in *Trin. T.* 1774, that this was forgery. They thought it quite immaterial whether such a man as *Vennest* existed or not; or if he did, whether he had kept cash at the banking house of Messrs. *Neale* and Co.'s; it was sufficient that the order assumed those facts, and imported a right on the part of the drawer to direct such a transfer of his property. *Lockett's case, O. B. June,* 1772.—2 *East's P. C.* 940.—1 *Leach,* 94. *S. C.*

But in these cases it is not necessary to specify the particular goods in the order, provided it be conceived in terms intelligible to the parties themselves to whom it is addressed. 2 *East's P. C.* 941.—*Jones's case,* 1 *Leach,* 204.

Nor is the statute confined to orders or warrants in *commercial transactions.*

In *R.* v. *M'Intosh,* 2 *East's P. C.* 942., an order for payment of prize-money, and in *R.* v. *Graham,* 2 *East's P. C.* 945., a forged order of a magistrate upon the high constable of a division, or the treasurer of the county, to pay a reward of 10*s.* to the prisoner for apprehending a vagrant under stat. 17 *G.* 2. *c.* 5. § 5., (*a*) were holden to be orders within the meaning of the 7 *G.* 2.; though in the latter case, the 18th section of the act subjects the party forging such order to a penalty of 50*l.*

A forged order for obtaining the reward, &c. for apprehending a vagrant not under hand and seal, &c. not within the statute.

Benjamin Rushworth was indicted at *York* Sum. Ass. 1816, for forging an order for the purpose of obtaining the sum of 4*l.* 10*s.* for apprehending and conveying certain vagrants: but the order not being under hand and seal, as required by 17 *G.* 2. *c.* 5. § 5., and being addressed to the County Treasurer, instead of to the High Constable, as that statute also requires, *Bayley* J. thought it was not such an order for payment of money as was within the statute, and directed an acquittal. *Rushworth's case, MS.*

A bill of exchange may be laid as an order for payment of money.

A bill of exchange may be stated as an order for payment of money. In *Shepherd's case, O. B. Sept.* 1781.—2 *East's P. C.* 944., the forged instrument, which was set out, was precisely in the form of a bill of exchange, and in the indictment it was stated to be an order for payment of money. It was objected that it ought to have been laid to be a bill of exchange. Bt in *Mich.* T.

(*a*) Repealed by stat. 5 *G.* 4. *c.* 83. See Vol. V. *tit.* Vagrant.

1781, the judges were unanimously of opinion that it was properly laid. It was observed that the indictment and the draft were the same as in *Lockett's* case, (*supra.*) where all the judges held the conviction proper; and that every bill of exchange seemed to be an order for payment of money, though not *vice versâ.*

With intent to defraud any person or corporation.] The intent to defraud and the party to be defrauded must be stated in the indictment; and the proof must agree with such allegation. But it need not state the manner in which the party is to be defrauded; for that is matter of evidence. *R.* v. *Powell, 2 Blac. Rep.* 787. 2 *East's P. C.* 976. 1 *Leach,* 77. **Intent to defraud.**

Stat. 7 *G.* 2. *c.* 22. was confined to those cases where the forgery was committed with intent to defraud *individuals* and not corporate bodies. *R.* v. *Harrison, O. B.* 1777; 2 *East's P. C.* 988.; and therefore stat. 18 *G.* 3. *c.* 18. was passed to remedy this defect. See *ante.*

By stat. 3 *G.* 4. *c.* 77. § 2. persons forging or receiving money for alehouse certificates, are guilty of misdemeanor. See Alehouses, Vol. I. pp. 40, 41. **3 G. 4. c. 77.**

§ III. Indictment and Evidence.

It is necessary to set forth in the indictment the instrument forged in words and figures. *R.* v. *Mason, 2 East's P. C.* 975.

It is sufficient if it be set forth in words and *figures,* after the words "as follows," without saying "according to the tenor following." *R.* v. *Powell, 2 East's P. C.* 976.

So it is sufficient to describe the instrument as "a paper writing, &c. *purporting* to be such an instrument," &c. *R.* v. *Birch* and *Martin;* 2 *East's* P. *C.* 980., *and* 2 *Blac. Rep.* 790.

But the word *purport* imports what appears on the face of the instrument; and, therefore, if it be stated in the indictment that the instrument *purports* to be so and so, and the instrument when set forth does not accord with what it is said to purport, it is bad.

In *Jones's* case in 1779 the instrument was described to be *a paper writing purporting to be a bank note;* but the court were of opinion that as it did not purport on the face of it to be a bank note, the indictment could not be supported; and that this defect could not be supplied by the representations made by the party when he passed off the note. *Jones's case, Dougl.* 300. — 2 *East's P. C.* 883.

So in *J. Reading's* case, 1793, where the indictment charged that the prisoner being possessed of a bill of exchange, *purporting* to be directed to *J. King,* by the name, &c. of *J. Ring,* forged the acceptance of the said *J. King,* judgment was arrested, because the bill did not *purport* to be drawn on *J. King,* as stated in the indictment. And *Buller* J., in delivering the opinion of the judges at the O. B., observed that the indictment, as drawn, was absurd and repugnant in itself; for the name and description of one person or thing could not purport to be another. *Reading's case, O. B., Sept.* 1793. — 2 *Leach,* 590. — 2 *East's P. C.* 981.

Again in *Gillchrist's* case, the indictment was for forging "a paper writing, purporting to be an order for payment of money dated, &c. with the name of *Thos. Exon* thereunto subscribed, *purporting* to have been signed by *Thos. Exon,* clerk, and to be

directed to *George* Lord *Kinnaird*, *Wm. Moreland*, and *Thomas Hammersley*, of, &c. bankers and partners, *by the name and description of Messrs. Ransom, Moreland*, and *Hammersley*, for the payment of the sum of 10*l*., &c.;" the tenor of which said false writing, &c. is as follows; viz. " Messrs. *Ransom, Moreland*, and *Hammersley*, please to pay to Mr. *Brooks*, or bearer, the sum of ten pounds for *Thos. Exon; Sept.* 11th, 1794;" with intent to defraud the said *George* Lord *Kinnaird*, &c. A motion was made in arrest of judgment; and upon a conference with the judges in *Easter* Term, 1795, it was resolved by ten judges present, that the judgment should be arrested, because the word *purport* imports what appears on the instrument itself. It means the *apparent* and not the *legal* import; and that this bill of exchange could not purport to be directed to Lord *Kinnaird*, because his name did not appear on the face of the bill. *Gillchrist's case, O. B.* 1795, 2 *East's P. C.* 982. — 2 *Leach*, 657.

And these determinations have been acted upon in various subsequent cases.

But a merely literal variance is not fatal; as in *Hart*'s case, where the word was written in the indictment " received," and it was ' reicevd" in the bill of exchange itself. 2 *East's P. C.* 977.

So where the prisoner was indicted for uttering a bill of exchange directed to Messrs. *Masterman, Peters*, and Co., with a forged indorsement thereon; and it was objected that there was a variance in the indictment, which imported to set out the bill according to its tenor, inasmuch as the letter *r* in Messrs. was omitted, and the abbreviation Messs. might stand for words which Messrs. could not; the objection was overruled, and the judges, upon the point being referred to them, held the indictment sufficient. *Oldfield's case, Durham Sum. Ass.* 1811, *cor. Bayley J., MS. C. C. R.*

But, if by addition, omission, or alteration, the word is so changed as to become another word, the variance will be fatal. 2 *Russ.* 1482. — *R.* v. *Beach*, 1 *Cowp.* 229.

Witnesses. On a prosecution for forging an instrument, which, if genuine, would subject a party to loss or liability, he is incompetent to prove any fact that in its consequences (whether immediate or remote) tends to establish the fabrication. *R.* v. *Boston*, 4 *East*, 572. 582. — *R.* v. *Watts, Hardr.* 331. — 3 *Salk.* 172. — *R.* v. *Caffy*, 2 *East's P. C.* 995.

And it seems that this incompetency is not confined to the single point of falsifying the hand-writing, but that he is equally incompetent to prove "any other fact which contributes to the proof of the forgery; or, in other words, any fact conducive to the general conclusion." 1 *Phill. Ev.* 113.

The principle upon which the rule has been justified, seems to be, that by establishing the forgery he invalidates the instrument, and by invalidating the instrument he exonerates himself from that loss or liability to which it would otherwise expose him.

When, however, the fact is merely collateral, and does not in any way contribute to the proof of the forgery, as where a witness is called to prove himself the person whom the prisoner intended to personate or describe; in such a case his testimony has been admitted. *Parr's case*, 1 *Leach*, 438. — 1 *Phill. Ev.* 114.

And though, on an indictment for forging a letter of attorney, transferring another man's stock, Mr. J. *Fortescue* refused to

admit the proprietor as a witness, yet the report does not say whether he came to establish his ownership or to disprove his signature. *R.* v. *Rhodes*, 2 *Str.* 728.

The general rule, however, is that stated; and, therefore, on an indictment for forgery, the person whose name has been forged is not a competent witness to prove that fact. *R.* v. *Russell*, 1 *Leach*, 8.

And the party whose signature has been forged, and who, therefore, is interested in invalidating the instrument, not only cannot disprove his signature, but he cannot give evidence tending to discredit it; since it may induce the jury to believe that a forgery, which otherwise they would have supposed genuine. *R.* v. *Croker*, 2 *Leach*, 987. — 2 *N. R.* 87.—*MS. C. R.*—1 *Phill. Ev.* 113, 114.

Witnesses.

A cashier, whose name has been forged to a scrip receipt, is incompetent to prove the forgery, since he disproves that which, if genuine, would render him accountable. *R.* v. *Reeves*, 2 *Leach*, 808.

So on an indictment for forging a receipt to a navy bill, in the name of the assignee of the certificate to the bill, he is incompetent to prove the forgery; since, were the signature genuine, he would appear to have received what he might be called upon to refund. *R.* v. *Thornton*, 2 *Leach*, 634.

In an indictment for forging a receipt to a bill of exchange, indorsed in blank, the drawer having paid it before it became due, is not (unless released by the person from whom the bill was purloined) a competent witness for the prosecution, to identify the prisoner with the receipt; since, by anticipating the day of payment, he opens the question whether he is not liable to repay the money. *R.* v. *Taylor*, 1 *Leach*, 214.

So on an indictment for forging a will, one named executor in a subsequent will is not competent to prove the forgery; since, by establishing the forgery, he invalidates the instrument, and by invalidating the instrument, he secures to himself those advantages which may result from his representing the deceased. R. v. *Rhodes*, 1 *Leach*, 24.

On a trial for forgery a release from the holder of a promissory note to the supposed drawer, in whose name it was forged, (there being no other name on the note to whom the drawer could be liable,) made him a competent witness to prove the forgery of his hand-writing. *Akehurst's case*, 1 *Leach*, 150.—*Dr. Dodd's case*, *ib.* 175.—1 *Phill. Ev.* 126.

But a witness, by whom a bill of exchange purports to be indorsed, is not rendered competent by a release from the person to whom the bill in question had been uttered, but who had not given value for it; for he has no interest in the bill, and the prisoner appearing to be the holder, a release from any other person would not be effectual. *R.* v. *Young*, *Worcester Lent Ass.* 1805. 1 *Phill. Ev.* 127.

See *Wait's case*, *ante*, p. 497.

Form of Commitment for Felony in uttering a forged Bank Note, under Stats. 15 G. 2. *c.* 13. § 11. and 45 G. 3. *c.* 89. § 1.

County of Warwick, to wit. } Sir G. C. *baronet, one of the justices of our lord the king, assigned to keep the peace within the said county. To the constable of* ——— *in the said county, and to the keeper of the common gaol at* Warwick, *in the said County.*

THESE are to command you the said constable, in his said majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of A. O., *charged this day before me the said justice, upon the oaths of* A. I., A. W., *and others, with feloniously uttering, publishing, disposing of, and putting away at* Birmingham, *in the said county, on the* ——— *day of* ——— *now last past, a certain false, forged, and counterfeited bank note, purporting to be a note of the governor and company of the bank of* England, *for the payment of one pound, he the said* A. O. *at the time of uttering, &c.* [or as the case may be] *well knowing the same to be false, forged, and counterfeited, with intent to defraud the said governor and company, contrary to the form of the statutes in such case made and provided.*

And you the said keeper are hereby required to receive the said A. O. *into your custody in the said common gaol, and him there safely keep, until he shall be from thence discharged by due course of law. Hereof fail you not. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

Fornication. See Lewdness.

Frame-Work Knitters.

For the punishment of frame-breaking, see stat. 4 G. 4. *c.* 46. § 2. Vol. V. *tit.* Stocking Frames.

[6 G. 3. c. 29.]

6 G. 3. c. 29. Pieces to be marked.

BY stat. 6 G. 3. *c.* 29. § 1. all frame-work knitted pieces, and stockings made of thread, cotton, worsted, or yarn, or any mixture of all or any of the said materials, or of any other materials, except such as shall be made of silk only, which shall contain three or more threads, shall be marked with the same number of ilet-holes, and no more, as there are threads contained in each piece or pair; and such ilet-holes shall be made distinctly in one direct line, or in the same course, and shall not exceed the distance of three inches from the two extreme ilet-holes; and no such ilet-holes shall be made or placed within the distance of four inches of any letter, figure, mark, or other device, which shall be put or woven in any such goods or manufactures; and all such ilet-holes shall be made within four inches of the top or end of every such piece or pair; and no ilet-hole, or imitation thereof, shall be made or put in any frame-work knitted piece or pair of stockings, upon any account whatsoever, except as hereinbefore directed.

§ 2. Nothing herein shall prevent any manufacturers from using remnants, or materials of any sort, in the welts and tops of stockings only, at any distance not exceeding three inches from the top, although the same shall not contain so great a number of threads as are contained in the legs of such stockings. 6 G.3. c.29.

Penalty on not marking.

§ 3. If any master frame-work knitter or master hosier, or any other person, shall make or work, or cause or procure to be made or wrought, any frame-work knitted goods of any of the materials aforesaid, or any mixture thereof (except such as shall be made of silk only), without being so marked, he shall forfeit the same, and also *5l.* for each piece of such frame-work knitted goods, or pair of stockings.

§ 4, 5, 6. Provided that the said penalty of *5l.* shall not extend to any journeyman, apprentice, servant, or person not making such goods or manufactures on his own account: but such person offending herein shall forfeit not exceeding 40*s.* nor less than 5*s.* for each piece or pair; but if he can prove that the goods by him unduly marked were so marked by direction of his master, or the person by whom he was employed, in that case he shall not be subject to any penalty.

Selling unmarked goods.

§ 7. And if any frame-work knitter, hosier, or other person, shall sell or expose to sale any of the said goods, not duly and truly marked as aforesaid, he shall forfeit the same, and also *5l.* for each piece or pair.

§ 8. Provided, that if the person prosecuted for selling or exposing the same to sale shall discover the vender or seller thereof, so as he may be convicted, such person shall be discharged from any penalty or forfeiture inflicted by this act.

Penalties how to be recovered.

§ 9. One justice where the offence shall be committed (not being a frame-work knitter, hosier, or proprietor of frames) may convict the offender, on the oath of one witness; and if on such conviction the penalties or forfeitures shall not be forthwith paid, the said justice shall issue his warrant to levy the same by distress, rendering the overplus, if any; and if no goods, or not sufficient, can be found, such justice shall, on oath thereof made to him by the person who shall have the execution of the warrant, commit the offender to the common gaol of the place where the offence shall be committed for any time not exceeding three months, unless the penalties and forfeitures shall be sooner paid and satisfied: all which penalties and forfeitures shall be applied half to the informer and half to the poor.

Appeal.

§ 10. Persons aggrieved may appeal to the sessions, giving ten days' notice in writing of his intent to the justice, and within two days after notice entering into recognizance before a justice with two sureties to try the appeal at such sessions; and the justices there, on due proof of such notice and recognizance, shall hear and determine the same, and award costs to either party, as they shall think fit; and their determination shall be final, binding, and conclusive, to all intents and purposes.

§ 12. Provided, that nothing herein shall extend to abridge or take away any rights or privileges of the master, wardens, and assistants of the company of frame-work knitters.

Fraud. See Cheat.

Friendly Societies. (a)

[33 G. 3. c. 54. — 35 G. 3. c. 111. — 43 G. 3. c. 111. — 49 G. 3. c. 125. — 57 G. 3. c. 130. — 59 G. 3. c. 128.]

33 G. 3. c. 54. Any number of persons may form themselves into a society, and make rules, &c.

See stat. 59 G. 3. c. 128. *post.* to which all societies formed after 12th July, 1819, must conform.

BY stat. 33 *G.* 3. *c.* 54. § 1. any number of persons may form themselves into and establish one or more society or societies of good fellowship, for raising by subscription of the members thereof, or by voluntary contributions, *a fund for the mutual relief and maintenance of the members thereof in old age, sickness, and infirmity; or for the relief of the widows and children of deceased members;* and such members, or such number of them as shall be nominated a committee for that purpose, may from time to time assemble together, and make such proper rules, orders, and regulations for the better government and guidance of the same, as to a majority of such society, or committee thereof so assembled, shall seem meet, so as the same shall not be repugnant to the laws of this realm, nor any of the regulations of this act: And they may impose and inflict such reasonable fines and forfeitures upon the members who shall offend against such rules, &c. as shall be just and necessary for duly enforcing the same, to be paid to such uses for the benefit of such society, as they shall by such rules, &c. direct; and they may alter and amend such rules, &c. as occasion shall require, or annul and repeal the same, and make new rules, &c. in lieu thereof.

Such rules, &c. to be exhibited to the sessions, who may annul or confirm them.

See 59 G. 3. c. 128. § 2, 3. *post.*

Rules to be filed without fee.

§ 2. Provided that all such rules, &c. with all convenient speed after the same shall be made, altered, or amended, and so after every making, &c. thereof, shall be exhibited in writing to the justices at the sessions or adjournment thereof for the county or place where such society shall be established, and such rules, &c. shall be subject to the review of such justices, who shall after due examination thereof at the then or the then next subsequent session, annul and make void all such rules, &c. as shall be repugnant to this act, and shall allow and confirm such as shall be conformable thereto; and after such confirmation, the rules, &c. so confirmed shall be signed by the clerk of the peace at such sessions, and a duplicate thereof on parchment shall be deposited with and filed by him at such sessions without any fee, and the same shall be binding upon all parties during the continuance of the same: And no such society which shall hereafter be established shall be deemed to be within the meaning of this act, until good rules, &c. for the government thereof shall have been confirmed and filed as aforesaid: And no society already established shall be deemed to be within the intent and meaning of this act, unless all the rules, &c. under which the same is thereafter to be governed shall be exhibited, confirmed, and filed in manner aforesaid, at some time before or at the *Michaelmas* sessions, or some adjournment thereof, in the year 1792. [But by stat. 35 *G.* 3. *c.* 111. § 1. further time is given till *Michaelmas* sessions, 1796.]

(a) See Vol. I. tit. Banks for Savings.

And by stat. 43 *G.* 3. *c.* 111. any such society who shall have exhibited the rules, &c. made for government thereof at any general or quarter sessions having peculiar jurisdiction for the place where such society is established, and not to the sessions for the county, &c. at large, may exhibit the rules, &c. of such society to the general quarter sessions, or at any adjournment thereof, to be holden for the county, &c. where such society is established, such rules, &c. bearing the certificate of the town clerk or other proper officer of the time when such rules, &c. were respectively first exhibited as aforesaid, or may exhibit in like manner a duplicate or a true copy of such rules, &c. with an affidavit annexed, to be taken before any justice of the county, division, or shire where such society is established, of the time when such rules, &c. so first exhibited, subject to the like examination, review, allowance, and confirmation, of such last-mentioned general quarter sessions or adjournment thereof, as is directed by stat. 33 *G.* 3. *c.* 54. § 2.; and such rules, &c. being confirmed by such last-mentioned general quarter sessions, or any adjournment thereof, in manner directed by the said recited act, may be filed at such sessions, and shall be as valid and effectual from the time the same were first exhibited at the sessions having such peculiar jurisdiction as aforesaid, as if the same had been originally exhibited and filed at the sessions holden for the said county, riding, division, or shire.

43 G.3. c.111. Any society who have so exhibited their regulations may exhibit them to the quarter sessions for the county, under certain regulations.

See 59 G.3. c.128. *post.*

By stat. 33 *G.* 3. *c.* 54. § 3. no rule, &c. confirmed in manner aforesaid, shall be altered, rescinded, or repealed, unless at a general meeting of the members convened by public notice in writing, signed by the secretary or clerk, in pursuance of a requisition by three or more members, and publicly read at the two usual meetings of such society held next before such general meeting for the purpose of such alteration or repeal, unless a committee of such members shall have been nominated for that purpose, in which case such committee shall be convened in like manner; and unless such alteration or repeal shall be made with the concurrence and approbation of three-fourths of the members then present, or by the like proportion of such committee as aforesaid; and such alteration or repeal shall be subject to the review of the justices at such sessions or adjournment as aforesaid, and shall be filed as aforesaid; and shall not be binding until agreed to and confirmed by such justices, and filed as aforesaid. (*a*)

33 G.3. c.54. No confirmed rules to be altered but at a general meeting, and to be subject to the review of the sessions.

See 59 G.3. c.128. § 5. *post.*

(*a*) An action cannot be maintained by the trustees of a friendly society elected under new regulations agreed to by the members, unless these regulations have been confirmed by the quarter sessions, although the original rules of the society were enrolled in pursuance of this act. *Batley* v. *Townrow*, 4 *Campb.* 5.

Sharp v. *Warren*, *M.* 59 *G.* 3. 6 *Price*, 131. Assumpsit for money had and received may be maintained against one who had been a member of a benefit club, for money entrusted to his keeping, by the rest of the society, in the name of the officers properly appointed for managing their affairs, under the rules.

If by the rules, the society are empowered to appoint a treasurer, an appointment of *two persons* to be *treasurers* is within the power. *S. C.*

It is not an objection to such an action, that the defendant, having been a member at the time when the promise is laid to have been made in the declaration, was a partner or tenant in common, and therefore could not be sued in assumpsit for money had and received. *S. C.*

33 G.3. c.54. Officers to be appointed;

§ 4. And such society may at any general meeting, or by their committee, if any such there be, elect and appoint such persons into the office of steward, president, warden, treasurer, or trustee of such society, and such clerks and other officers as shall be deemed necessary for carrying into execution the purposes of such institution, for such time and for such purposes as shall be fixed and established by the rules of such society, and elect and appoint others in the room of those who shall vacate or die; and every such officer or other person who shall be appointed to any office touching the receipt, management, or expenditure, of any money collected for the purpose of any such society, before he shall be admitted to take upon him the execution thereof, shall (if required by the rules of such society) become bound with two sufficient sureties for the just and faithful execution of such office or trust, and for rendering a just and true account according to the rules, &c. of such society, and in all matters lawful to obey the same, in such penal sum as the major part of such society at such meeting as aforesaid shall think expedient and to the satisfaction of such society; and such bond to be given by such treasurer or trustee shall be given to the clerk of the peace of the county, riding, division, or shire, where such society shall be established, without fee; and, in case of forfeiture, it shall be lawful to sue upon such bond in the name of the clerk of the peace for the time being, for the use of such society; and every such bond to be given by any other person appointed to any other office or trust as aforesaid, shall be given to the treasurer or trustee of such society for the time being, to be by him prosecuted for any forfeiture thereof for the use of such society; and no bond or other security given to or on account of such society, in pursuance of this act, shall be chargeable with any stamp duty.

and to give security if required.

Such securities not subject to any stamp duty. See also 59 G.3. c.128. § 6. *post.*

Committees may be appointed.

§ 5. Every such society may elect and appoint any number of the members thereof, not less than eleven, to be a committee, and shall and may delegate to such committee all or any of the powers given by this act to be executed, who shall continue to act as such committee for such time as they shall be appointed; and in all cases where a standing committee shall be appointed for general purposes, their powers shall be first declared in their rules, &c. confirmed and filed at the sessions as aforesaid; and where a committee shall be appointed for any particular purpose, the powers delegated to them shall be entered in a book by the secretary or clerk, and five of the members of such committee at least shall be necessary to concur in any act of such committee; and they shall, in all things delegated to them, act for and in the name of such society, which acts shall have the like force as if done at any general meeting: Provided, that the transactions of every such committee shall be subject to the review, allowance, or disallowance and controul of such society, in such manner as by their rules, &c. confirmed and filed as aforesaid is directed.

An act of parliament, giving a summary remedy to persons against defaulters, though in terms apparently *prescribing* such remedy, is cumulative, and does not take away the previous right to sue by action at law. *S. C.*

See the case of *Rex* v. *Phœbe Bramley*, Vol. III. title Larceny.

§ 6, 7. Such treasurer or trustee may and shall, with the consent of such society, testified as directed by their general rules and orders, lay out such part of the money belonging to such society as the exigencies thereof shall not immediately call for, either on private security, to be approved of as aforesaid, (to be taken in the name of such treasurer or trustee,) or may vest the same in the public funds in the name of such treasurer or trustee; and with such consent as aforesaid may alter and transfer such securities and funds, and make sale thereof respectively; and the dividends, interest, and proceeds thereof shall be brought to account by such treasurer or trustee, and shall be applied to the use of such society. *See* 59 *G.* 3. *c.* 128. § 10, 11, 12. *post.*

33 G. 3. c. 54. Surplus money may be lent out at interest.

Securities may be taken in the name of the treasurer.

§ 8. Provided, that the treasurer or trustee and all other officers of such society, who shall have or receive any money, effects, or funds, of such society, or shall be entrusted with the disposition, management, or custody thereof, or of any security relating to the same, his executors, administrators, and assigns, shall upon demand in pursuance of any order of such society or committee, give in his account at a general meeting, or to such committee as aforesaid, to be examined and allowed or disallowed, and shall on like demand pay over the money remaining in his hands, and assign and transfer or deliver all securities, effects, or funds, taken or standing in his name as aforesaid, or being in his custody, to the treasurer or trustee, or such other person as such society shall appoint; and in default thereof, such society, in the name of the treasurer or trustee, may exhibit a petition in *Chancery*, or the *Exchequer*, who may hear and determine the same, and assign counsel, and appoint a clerk of such court to advise and carry on such petition on behalf of such society, who are to act without fee; and no fee shall be taken by any officer of such court, and the proceedings therein shall not be chargeable with any stamp duty.

Treasurers, &c. to render accounts, and pay over balance, &c.

And on neglect application may be made to the court of chancery.

§ 10. If any person appointed to any office by any such society, and having in his hands any money or effects or securities belonging to the same, shall die or become a bankrupt (*a*), or insolvent, his executors, administrators, or assignees shall, within 40 days after demand made by the order of any such society, or the major part of them assembled at any meeting, deliver all things belonging to such society to such person as they shall appoint, and shall pay out of the assets or effects of such person all sums of money remaining due which such person received by virtue of his said office before any of his other debts are paid, and all such assets and effects shall be bound to the payment thereof accordingly.

Money due to societies to be paid before any other debts.

§ 11. And all the effects whatever belonging to such society shall be vested in the treasurer or trustee for the time being for the benefit of such society, and after their death or removal, shall vest in the succeeding treasurer or trustee without any assignment or transfer whatever, and shall for all purposes of action or suit, as well criminal as civil, in anywise concerning the same be deemed to be and be stated to be the property of the person appointed treasurer or trustee, in his name; and such person so appointed may

Effects of societies to be vested in the treasurer, &c.

(*a*) This applies only to cases where the officer has, by virtue of his office, been entrusted with the money or effects of the society. *Ex parte Buckland*, 1 *Buck.* 214.

33 G. 3. c. 54. bring or defend any action, suit, or prosecution, concerning the monies, goods, or chattels, or effects of such society; and may in like cases sue and be sued, plead and be impleaded, in his proper name without other description; and who may bring and defend actions, sue or be sued; and the same shall not be discontinued by the death or removal of such person. *See Cartridge* v. *Griffiths*, 1 *B. & A.* 57.

Societies to declare the purpose of their establishment, &c.

§ 12. Every such society, before any of the rules, &c. thereof shall be confirmed by the justices in manner aforesaid, shall declare by one or more of the general rules, &c. of such society, the intents and purposes for which it is intended to be established, and shall also therein direct all and every the uses and purposes to which the money which shall be subscribed, paid, or given, for the benefit thereof, or shall arise therefrom, or belong thereto, shall be appropriated and applied, and in what shares and proportions and under what circumstances any member or other person shall become entitled to the same or any part thereof, which application shall not in anywise be repugnant to the uses, intents, and purposes of such society so declared as aforesaid; and such rules, &c. shall be complied with and enforced, and such monies shall not be diverted or misapplied, under such penalty or forfeiture as by any general rule, &c. shall be imposed and inflicted.

May inflict penalties.

Not to be dissolved without consent of five-sixths of the existing members.

§ 12. It shall not be lawful for any such society to dissolve or determine the same so long as the intents or purposes declared by them remain to be carried into effect, without the consent of five-sixths of the then existing members, and also of all persons then receiving or entitled to relief, testified under their hands individually and respectively; nor shall such society direct the division or distribution of such stock or fund, or any part thereof, among the members, other than for carrying into effect the general intents and purposes thereof, declared by them, and confirmed by the justices as aforesaid; but all such rules, &c., for the dissolution of such society, without such consent, or for the distribution contrary to the rules, &c. shall be void. *See* 59 *G.* 3. *c.* 128. § 8. *post.*

Rules and orders to be entered in a book, and received in evidence, &c.

§ 13. All the rules, orders, and regulations shall be entered in a book to be kept by a member to be appointed for that purpose, and shall be signed by the members, and shall at all reasonable times be open for their inspection, and shall be deemed original orders, and shall be received in evidence in all courts; and no *certiorari* shall be allowed to remove any such rules, &c. into the courts at *Westminster*.

Societies may receive donations.

§ 14. Any such society may receive donations towards the supply of their stock, which shall be applied to the general purposes of this society in like manner as the contributions of the several members, and in no other manner.

Members thinking themselves aggrieved, may complain to two justices, who may hear and determine the same.

§ 15. If any person, having been admitted a member of any such society, shall think himself aggrieved by any act, matter, or thing done or omitted by any such society, or person acting under them, two neighbouring justices, on complaint (A.) (C.) upon oath or affirmation by or on behalf of such person, may summon (B.) the presidents, wardens, stewards, or other principal officers of such society by whatever name they shall be called, or any one of them,
A. if such complaint be made against such society collectively;
C. and in case such complaint shall be made against any person ap-
B. pointed to any such office as aforesaid, then may summon such

person to appear before them, and also may summon to appear at the same time and place, if there be occasion, all such persons as shall appear to have the custody of the rules, orders, and regulations of such society; and such justices at the time and place named in such summons, whether the person summoned appear or not, on proof upon oath of such summons having been duly served or left at his usual place of abode, shall proceed peremptorily to hear and determine in a summary way the matter of such complaint according to the true purport and meaning of the rules, orders, and regulations of such society, confirmed by the justices as aforesaid, and shall make such order therein (D.) as to them shall seem just, which shall be final to all intents and purposes, and shall not be subject to appeal, nor removeable into the courts at *Westminster*. 33 G.3. c.54. D.

§ 16. If provision shall be made by the rules or orders of any such society, and confirmed as aforesaid, for a reference by arbitration of any dispute between such society or any person acting under them, and any individual members thereof, the matter so in dispute shall be referred to such arbitrators as shall be named and elected in such manner as prescribed in such general rules and orders; and whatever award, order, or determination shall be made by such arbitrators, or the major part of them, according to the true purport and meaning of the rules and orders of such society, confirmed as aforesaid, shall be binding and conclusive, and final without appeal, or being subject to the control of two justices in the manner hereinbefore prescribed.

Where general rules direct disputes to be settled by arbitration.

§ 17. No member of any society established in pursuance of this act, who shall inhabit in any parish, township, or place not having a legal settlement there, or who shall come to inhabit or reside there, and shall deliver to the churchwardens or overseers, or either of them, a certificate under the hands of the stewards, presidents, wardens, or treasurers of such society, or any two of them, for the time being, to be attested by one credible witness, thereby acknowledging the person mentioned in such certificate to be a member of such society, shall during the time such person shall continue to be such member, be removeable, until actually chargeable or forced to ask relief of the parish, &c. to which such certificate was delivered.

No member producing a certificate thereof removeable till actually chargeable.

By stat. 35 *G*.3. *c*.101. No person shall be removeable from any parish until actually chargeable, but this stat. does not repeal, or even render unnecessary the former protection by certificate, under stat. 33 *G*.3. *c*.54. § 17.; and therefore where an unemancipated daughter was delivered of a bastard child in the township of *Idle*, during her father's residence there, under a certificate acknowledging him to be a member of a friendly society established under stat. 33 *G*.3. *c*.54. the court of K.B. decided that such certificate extended not only to him but to all the members of his family also; that the daughter, therefore, was at the time of her delivery residing in the township under the authority of 33 *G*.3. *c*.54., and that by § 25. of that act the settlement of the child followed that of the mother. *R*. v. *Inhabitants of Idle*, M. 59 *G*.3. 2 *B*. & *A*. 149. Vol. IV. *tit*. Poor, § V. 1.

35 G.3. c.101. R. v. Inhabitants of Idle.

Stat. 33 *G*.3. *c*.54. § 18. Provides that every such certificate shall express the places of abode of the persons signing and attesting the same, and one of the attesting witnesses shall make

How such certificates are to be authenticated.

33 G.3. c.54.

oath before a justice of the county, liberty, borough, town corporate, or place where such society shall be established, that he did see the persons whose names are thereunto set severally sign the said certificate, and that the names of such witnesses are of their own proper hand-writing; which said justice shall also certify that such oath was made before him; and every such certificate so made, and oath of the execution thereof so certified by the said justice shall be taken, deemed, and allowed in all courts whatsoever as duly and fully proved, and be received as evidence without other proof thereof.

Justices may summon persons bringing certificates to be examined as to their settlements.

§ 19. Provided that upon complaint made by the churchwardens and overseers where such certificate shall be delivered to any justice or justices of the county, division, or shire, or city, borough, town corporate, or place where such person shall reside or come to reside under the authority of this act, such justice or justices shall summon such person before him or them in the division or place where such person shall reside or come to reside, in order to be examined on oath touching the place of his last legal settlement, and such person is required to obey such summons, and make oath accordingly; and such justice or justices is and are required to give an attested copy of such examination so taken before him or them to the person making the same, to be by him or any person on his behalf at any time afterwards produced before any such justices as aforesaid, before whom such person shall be again summoned to make oath as aforesaid; and in case any such person shall be so again summoned, then on the production of such attested copy such person shall not be compelled or required to take any other or further oath with regard to any of the matters contained in such examination, but such person shall, if required, permit a copy thereof to be taken for such last mentioned justices.

Copies of such examinations to be given to the parties, which shall exempt them from further examination.

Two justices may declare, by an order, the place of settlement of such persons without removing them.

§ 20. Any two justices who shall have taken such examination as aforesaid, or before whom such attested copy of such examination shall be produced at the request of such churchwardens and overseers as aforesaid, shall by an order under their hands and seals adjudge and declare the place of the last legal settlement of such person having been so examined on oath as aforesaid, or of such of his family as shall reside in such parish or place under the authority of this act, without issuing any warrant to remove such person or his family as aforesaid to such place of their last legal settlement; and a duplicate of such order shall be transmitted to the quarter sessions to be holden next after 20 days from the time of making thereof, for the county, riding, division, or shire, where such person shall so reside, to be there filed; and a copy of every such order, attested by one witness, or a duplicate thereof, together with an attested copy of such examination to be annexed to such copy of such order or duplicate, shall be delivered to the churchwardens and overseers of the parish or place in which the person mentioned in such order shall be adjudged to be last legally settled, as aforesaid, or to any or either of them, at least 15 days before the first day of holding such sessions; and upon proof on oath of one witness before the justices at such sessions of the delivery of such copy or duplicate with such examination annexed as aforesaid, such justices shall direct the same to be filed at such sessions; and every such order so filed shall be final and conclusive in ascertaining and determining the place of the last legal settle-

A duplicate of such order to be transmitted to the sessions; and a copy of such order and examination to be returned to the place of settlement.

ment of the persons named in such order, unless appealed against within the time hereinafter mentioned. 33 G.3. c.54.

§ 21. Provided, that all persons who shall think themselves aggrieved by any such adjudication of the said justices may appeal to the quarter sessions to be holden next after 15 days from the time of the delivery of such copy or duplicate as aforesaid; and such sessions shall receive such appeal, and hear and determine the merits thereof, in like manner, and with the same effect, and under the like rules, as if the persons mentioned in such orders had been by warrant of two justices actually removed, and may award like costs, to be recovered in like manner as is directed on appeals against orders of removal by any statute now in force. Appeal.

§ 22, 23, 24. But no member of any such society, who shall reside in any parish or place under and by virtue of this act, shall acquire any settlement therein by delivery and publication of any notice in writing, unless made after he shall cease to be a member thereof, and after the revocation of his certificate hereinbefore mentioned.—Nor by being rated to and paying any tax or rate.—Nor shall any apprentice, or hired servant, to any such member of any such society, who came into, or shall reside in any parish or place under the authority of this act, and not afterwards having gained a legal settlement therein, be adjudged to gain any settlement by reason of such apprenticeship or service. Persons residing under this act shall gain no settlement by notice; nor by paying taxes; nor by being an apprentice, or servant to any such persons.

In order to prevent the settlement of an apprentice bound to a master who was residing in a parish under a certificate from a friendly society, it is not sufficient for the certificated parish merely to produce the certificate upon appeal to the sessions from an order of removal of the apprentice to such parish, but they must also shew that such certificate *had been delivered* to the parish officers before the service of the apprentice. *Rex* v. *Egremont*, T. 51 *G*.3. 14 *East*, 253.

§ 25. Every child which shall be born a bastard in any parish or place during the mother's residence therein under the authority of this act shall have the same settlement which the mother had at the time of the birth of such child; any law, usage, or custom to the contrary notwithstanding. Bastards to have the mother's settlement.

§ 26. When any overseers shall have been put to any charge in maintaining any person or his family residing in any parish or place under the authority of this act, or in removing any person back to the place where he shall belong after he shall have become chargeable, or asked relief as aforesaid, such overseer shall be reimbursed reasonable charges by the overseers of the parish or place to which such person shall belong, such charges having been first ascertained and allowed by one justice residing near where such charges shall be incurred; to be levied in case of refusal of payment by distress and sale of the goods and chattels of such overseers as last aforesaid, by warrant of one justice, returning the overplus, if any there be. Charges of maintenance and removal to be reimbursed.

And by stat. 35 *G*.3. *c*. 111. § 2. After reciting that several benevolent and charitable institutions and societies formed for relieving, by voluntary subscriptions and benefactions, widows, orphans, and families of the clergy, and others in distressed circumstances, may have funds which they may wish to place out on public securities, under the management of a treasurer, and under the authority of parliament, it is enacted that the governors, di- 35 G.3. c.111. Governors of institutions for relief of widows, &c. may frame rules, which are to be presented for confirmation

35 G. 3. c. 111. rectors, managers, or members of any such institutions may frame good and wholesome rules for the management and distribution of their funds, and amend and alter the same, or make new ones, as occasion may require, and procure the same to be presented to the justices for confirmation within the time hereinbefore limited, (i. e. *March*, 1796,) and registered under and subject to the same conditions, methods, restrictions, and regulations as the members of the societies established by stat. 33 *G.* 3. *c.* 54.

as by the aforesaid act.

Institutions, whose rules shall be confirmed, may appoint treasurers, &c.

§ 3. And the governors, directors, managers, or members of any such institutions, whose rules shall be confirmed and registered as by said recited act, may appoint a treasurer, who shall give security as by the said recited act, and shall be subject to account for the funds belonging to such institution, and the same shall be vested in such treasurer, who may sue and be sued as directed in said recited act; and all things in the aforesaid act contained, so far as the same relate to such treasurers and the funds vested in them, shall extend to the institutions established by virtue of this act, as fully and effectually as any society established by virtue of the aforesaid recited act. And all the powers, authorities, rules, methods, directions, regulations, provisions, conditions, and restrictions in the said act contained, relating to the matters before mentioned, shall be applied to the several institutions established by virtue of this act, as fully as if the same had been repeated and re-enacted herein.

49 G. 3. c. 125. Justices on complaint may enforce the observance of the rules, and levy any arrears by distress and sale.

By stat. 49 *G.* 3. *c.* 125. § 1. If any person having been admitted a member of any society established under the authority of stat. 33 *G.* 3. *c.* 54. shall offend against any of the rules, orders, or regulations of such society, it shall be lawful for any two justices residing within the county, riding, division, shire, stewartry, city, liberty, or place within which such society shall be held, upon complaint made on oath by any member, to summon such person against whom such complaint shall be made; and upon his appearance, or, in default thereof, upon due proof upon oath of the service of such summons, such justices shall proceed to hear and determine the said complaint according to the rules, &c. of the said society confirmed as directed by the said act, and shall make such order therein as to them shall seem just; and in case the said justices shall adjudge any sum of money to be paid by such person against whom such complaint shall be made, and such person shall not on notice of such order forthwith pay the sum of money so adjudged to the person or persons, and in the manner directed by this act, such justices shall, by warrant under their hands and seals, cause the same to be levied by distress and sale of the goods of such person on whom such order shall have been made, together with such costs as shall be awarded by the said justices, and also the costs and charges attending such distress and sale.

Societies established before 1796 allowed to file their rules.

And by § 2. Whereas it was provided by stat. 33 *G.* 3. *c.* 54. that no society to be established for the purposes therein recited should be deemed to be within the same act, unless the rules of the society should be filed at the quarter sessions before the end of 1794, which time was enlarged by an act of the thirty-fifth year of his present majesty's reign to *Michaelmas*, 1796, it is enacted, that all such societies, the rules, &c. of which shall have been exhibited to the justices since *Michaelmas*, 1796, or which shall at any time here-

after be exhibited in the manner directed by stat. 33 *G*. 3. *c*. 54., and which shall have been or shall be dealt with, examined, approved of, and confirmed by the justices in the manner therein directed, and deposited with the clerk of the peace, and filed as directed also by the said act, shall be taken to be within the said act, as amply as if their rules had been established within the periods limited in either of the recited acts. **49 G. 3. c. 125.**

Orders of justices for payment of money, to specify the time and manner of payment.

By § 3. If complaint shall be made to two such justices by any member, of relief having been refused to him by any such society, to which he shall be lawfully entitled according to the rules of the society to which he shall belong, the said two justices residing within the county, &c. within which such society shall be held, shall, upon complaint made by or on the behalf of the person aggrieved thereby, summon the person, being an officer of the society, against whom such complaint shall be made, and upon his appearance, or in default thereof, upon due proof upon oath of the service of such summons, shall proceed to hear and determine the said complaint, and award such sum of money to be forthwith paid to the said complainant as shall appear to them to be due on such award as aforesaid, together with such a sum for costs, not exceeding the sum of ten shillings, as to them shall seem meet; and if the said sums so to be awarded, together with such costs, shall not be forthwith and in the presence of such justice or justices paid to such complainant, or to some person there attending on his behalf, then such justices shall, by warrant under their hands and seals, cause such sum and costs as aforesaid to be levied by distress, or by distress and sale of the monies, goods, chattels, securities, and effects belonging to the said society, together with all further costs and charges attending such distress or such distress and sale, returning the overplus (if any) to the said society, or to one of the treasurers or trustees thereof, and in default of such distress being found, then to be levied by distress and sale of the proper goods of the officer or officers of the said society so neglecting or refusing as aforesaid, together with such farther costs and charges as aforesaid, returning the overplus (if any) to the owner, and so from time to time as often as complaint shall be made of the non-payment of any sum or sums directed by such order to be paid as aforesaid, such justices shall by like warrant cause such arrears from time to time to be levied in the manner before directed: provided always, that whatever sums shall be paid by any such officer or officers, or levied on his or their proper goods, in pursuance of the order of any justices as aforesaid, shall be repaid, with all damages accruing to him or them, by and out of the monies belonging to such society, or out of the first monies which shall thereafter be received by such society.

Orders of justices to be made on officers of societies by name, and served on them.

And by § 4. All orders made by justices by virtue of the said act or this act, upon the complaint of any person having been admitted a member of any society established under the said act, who shall be aggrieved by any act or thing done or omitted to be done by any such society, shall be made upon the presidents, wardens, stewards, treasurers, trustees, or other principal officers of the society to which such complaints shall relate, or any one or more of them, or any of them, at the discretion of the said justices, in the proper name or names of such officer or officers; and every such order may be served upon the officer or officers so named therein, either

49 G.3. c.125. by delivering a copy of the said order to such officer or officers, or one of them, or leaving the same at his last or usual place of abode; and such service shall be binding on such officer or officers, and on the society to which such officer or officers shall belong, to do and perform, or cause to be done and performed, all and every the matters and things contained in and directed by such order, to be done according to the true intent and meaning thereof.

Orders to be final.

And by § 5. Every order, adjudication, or award of any justice or justices under this act, shall be final and conclusive to all intents and purposes, and shall not be removed or removeable into any court of law, or restrained or restrainable by the injunction of any court of equity.

In R. v. *the Justices of Staffordshire*, 12 *East*, 280., the court of K. B. refused a mandamus to the defendants, to allow the rules of a society of Roman catholic secular clergy priests, as not being within the meaning of the act; the object of the society not being confined to the charitable relief and maintenance of its old, sick, and infirm members.

Note. It is observable that the original act, viz. stat. 33 *G*. 3. *c*. 54. was extended in its operation as to time, by stat. 35 *G*. 3. *c*. 111. to other similar societies formed before or immediately after *Michaelmas*, 1796, and that the same act of the 35 *G*. 3. *c*. 111. further extended the benefit of stat. 33 *G*. 3. *c*. 54. to certain other charitable institutions.— Afterwards stat. 49 *G*. 3. *c*. 125. § 2. extended the period named in stat. 35 *G*. 3. *c*. 111. for filling the rules, &c. of *such* societies as were established for the purposes named in stat. 33 *G*. 3. *c*. 54. indefinitely.

57 G.3. c.130. Friendly societies may subscribe any portion of their funds into the funds of provident institutions.

Stat. 57 *G*. 3. *c*. 130. § 6. Enacts, " that it shall be lawful for any *friendly society*, established under and by virtue of any act or acts relating to friendly societies, from time to time to subscribe the whole or any part of the funds of such friendly society as they shall from time to time direct, through their treasurer, steward, or other officer or officers, into the funds of any institution which shall take the benefit of this act, and which shall be willing to receive the same, under such terms and conditions as shall be specially provided for that purpose by the rules, orders, and regulations of such institution: Provided always, that the receipt or discharge of the treasurer or other officer of such friendly society for the time being, for any money, stocks in the public funds, or other security, paid, transferred, or delivered according to the requisition of such treasurer or other officer, apparently authorised to require such payment, transfer, or delivery, shall be a sufficient discharge for the same; and the institution in which such deposit shall be made shall not be responsible for any misapplication of any such money, stock, or security by the person or persons to whom the same shall be so paid, transferred, or delivered, or for any want of authority of the person or persons requiring or receiving such payment, transfer, or delivery."

59 G.3. c.128. By stat. 59 *G*. 3. *c*. 128. After reciting that whereas the habitual reliance of poor persons upon parochial relief, rather than upon their own industry, tends to the moral deterioration of the people, and to the accumulation of heavy burthens upon parishes; and it is desirable, with a view as well to the reduction of the assessments made for the relief of the poor, as to the improvement of the habits of the people, that encouragement should be afforded to

persons desirous of making provision for themselves or their families out of the fruits of their own industry: And whereas by the contributions of the savings of many persons to one common fund, the most effectual provision may be made for the casualties affecting all the contributors; and it is therefore desirable to afford further facilities and additional security to persons who may be willing to unite in appropriating small sums from time to time to the formation of a common fund, for the purposes aforesaid; and it is desirable to protect such persons against the effects of fraud or miscalculation: And whereas the provisions of stats. 33 *G.* 3. *c.* 54., 35 *G.* 3. *c.* 111., 43 *G.* 3. *c.* 111., and 49 *G.* 3. *c.* 125., have been found insufficient for their purposes, and great abuses have prevailed in many societies established under the authority of such acts; it is enacted, "that no society hereafter to be formed in *England* or *Wales*, or the members thereof, shall be entitled to the benefits, or subject to the provisions, of the said acts, unless such society shall have been constituted under the authority and according to the provisions of this act." 59 G. 3. c. 128.

Future societies to conform to this act.

§ 2. "When any number of persons in *England* or *Wales* shall intend to form, under the authority of this act, a friendly society or institution, whereby it is intended to provide by contribution, on the principle of mutual insurance, for the maintenance or assistance of the contributors thereto, their wives, or children, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency, whereof the occurrence is susceptible of calculation by way of average, it shall be lawful for such persons to make application by memorial (E.) signed as hereinafter mentioned, to the justices assembled at the general quarter sessions of the peace, or any adjournment thereof, in and for the county, riding, or place of separate jurisdiction, wherein such society is about to be established, for a confirmation and approval of the rules of such intended institution, and of the tables of payments and allowances to be adopted therein; and if such justices, or any committee by them appointed, consisting of not less than three justices (of whom two shall be a quorum) shall, after due examination thereof, be satisfied that the contingencies for which it is intended to provide, whether specifically named in this act or not, are such as, according to the true meaning and intent of this act, are fit to be provided for by such society, and shall deem the rules and tables of such society, either in the form in which they shall have been originally exhibited, or with such omissions, additions, or alterations as may be made therein by the said justices, with the consent of the persons proposing to be trustees of such society, to be fit and proper, and shall be satisfied that the formation of such society will be useful and beneficial, regard being had to the existence of any other society already formed under wholesome rules within the same district for the like purposes; the said rules and tables so confirmed or amended shall be deposited and enrolled according to the provisions of the said first-mentioned act, and a copy thereof, authenticated by the signature of two or more justices, shall be delivered to the trustees of such society, and shall thenceforward become the rules of such society, and shall be binding on all parties concerned: Provided, that such justices shall not confirm and allow any tables of payments or benefits, or any rules dependent upon or connected with the calculation thereof, until it

The rules and tables of friendly societies to be confirmed at the general quarter sessions.

E.

Proviso as to tables of payments and benefits.

59 G.3. c.128. shall have been made appear to such justices that the said tables and rules are such as have been approved by two persons at the least, known to be professional actuaries, or persons skilled in calculation, as fit and proper, according to the most correct calculation of which the nature of the case will admit."

Quartersessions may publish general rules, and petty sessions may act thereon.

§ 3. "It shall be lawful for the justices assembled at the general quarter sessions of the peace for any county or riding in *England* or *Wales*, from time to time to make and publish such general rules for the formation and government of friendly societies or institutions under the authority of this act, as to such justices may appear fit, and to require that the rules of all societies thereafter established within such county or riding shall be made conformable to such general rules; and it shall also be lawful for such justices to declare that the rules proposed for the formation of such friendly societies or institutions which shall be made conformable to such general rules, may be exhibited to and confirmed by any two or more justices holding petty sessions within the division wherein any such society is to be established; and in such case, and subject always to the direction of such general rules published as aforesaid, such justices in petty sessions shall have the like powers, and their proceedings shall be subject to the like provisions, in regard to the formation of friendly societies, as are by this and the former acts established in respect of the justices assembled in general or quarter sessions."

Appointment of trustees.

§ 4. "Every memorial presented to the justices as aforesaid shall set forth the names, residence, and occupation of three persons at the least, of whom the majority shall be substantial householders, assessed to the relief of the poor upon a sum not less than fifty pounds, which persons shall be trustees of such society or institution; and the signature of such intended trustees shall be affixed to such memorial; and such society shall from time to time, in such manner as may have been prescribed by the rules thereof, elect other persons, duly qualified as aforesaid, to fill such vacancies as may occur among such trustees; and in case such vacancy shall continue for more than three months, so as to reduce the number of trustees below the number of three, it shall be lawful for the remaining trustees to nominate one other fit person to be the third trustee; provided, that no trustee shall be removed from his office without his own consent, except with the approbation of two or more justices in petty session assembled."

Memorial to be signed by trustees.

Provision for alteration of rules.

§ 5. "When and as often as the trustees and persons having, under the rules of any such society, the management thereof, shall be desirous of making any alteration in or addition to the rules and tables allowed and deposited as aforesaid, it shall be lawful for them to make further application by memorial to the justices in general, or petty sessions as aforesaid, such memorial being signed by the trustees, or the major part thereof, and such application shall be dealt with by the said justices according to the provisions hereinbefore contained, with respect to the allowance or alteration of the rules and tables proposed at the first establishment of such society, in as far as the same are applicable thereto.

Treasurer and other officers.

§ 6. The trustees of each such society shall appoint one fit person or more to be treasurer or treasurers of such society; and shall require from such treasurer or treasurers such securities as the said

trustees may from time to time deem necessary and proper; and no bond or other security to be given to or on account of any such society, or in pursuance of this act, shall be charged or chargeable with any stamp duty whatever.

59 G.3. c.128. **Exemption from stamp duties.**

Property of societies vested in trustees.

§ 7. All monies, goods, chattels, and effects whatever, and all securities for money or other obligatory instruments and evidences or muniments, and all other effects whatever. and all rights or claims belonging to or had by such institution, shall be vested in the trustee or trustees of such institution for the time being, for the use and benefit of such institution, and the respective depositors therein, their respective executors or administrators, according to their respective claims and interests, and after the death or removal of any trustee or trustees, shall vest in the succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, and subject to the same trusts, without any assignment or conveyance whatever, except the transfer of stocks and securities in the public funds of *Great Britain;* and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be the property of the person or persons appointed to the office of trustee or trustees of such institution for the time being, in his, her, or their proper name or names, without further description; and such person or persons shall and they are hereby respectively authorized to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, in law or equity, touching or concerning the property, right, or claim aforesaid, of or belonging to or had by such institution; and such person or persons so appointed shall and may in all cases concerning the property, right, or claim aforesaid of such institution, sue and be sued, plead and be impleaded, in his, her, or their proper name or names, as trustee or trustees of such institution, without other description; and no such suit, action, or prosecution shall be discontinued or abate by the death of such person or persons, or his or their removal from the office of trustee or trustees, but the same shall and may be proceeded in by the succeeding trustee or trustees, in the proper name or names of the person or persons commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding trustee or trustees shall pay or receive like costs, as if the action or suit had been commenced in his or their name or names, for the benefit of or to be reimbursed from the funds of such institution.

Restrictions upon dissolution of society or division of funds.

§ 8. It shall not be lawful to dissolve any society or institution established under the authority of this act; nor shall any division of the funds thereof be made, otherwise than in the ordinary course of proceeding, according to the rules confirmed as aforesaid, without the consent of the trustees or the major part of them: Provided always, that no such consent of trustees shall be given, unless and until it shall have been certified by two or more professional actuaries or persons skilled in calculation as aforesaid, which persons shall have been approved as such by the justices as aforesaid, that, according to the most correct calculation of which the case will admit, the interest of all the contributors to such institution, and of all persons having claims thereon, in possession or expectancy, are,

59 G.3. c.128. by the proposed scheme of dissolution or division, fairly dealt with and secured.

Place of meeting, and powers and duties of members, to be specified in the rules.

§ 9. The rules of every society or institution formed under the authority of this act, shall specify the place or places at which it is intended such society or institution shall hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of such committees or officers as may be appointed for the management of the affairs of such society, subject always to the provisions of this act with respect to the appointment and duties and powers of the trustees; and such society or institution shall not be subject to the provisions and restrictions of the said act of the thirty-third year of his present majesty's reign, as to the appointment of committees, or otherwise, with respect to the management of such society or institution.

Funds may be subscribed into saving baak;

§ 10. It shall be lawful for any society or institution established under the authority of this act, from time to time to subscribe the whole or any part of the funds of such society or institution into the funds of any institution which shall have taken the benefit of stat. 57 *G.*3. *c.*130. *to encourage the establishment of banks for savings in England* (*a*), subject to the several provisions therein contained, or of stat. 58 *G.*3. *c.*48. to amend the said act; and see 59 *G.* 3. *c.* 128. § 6., *ante*, p. 532.

57 G.3. c.130.

58 G.3. c.48.

59 G.3. c.128. or into bank of England on debentures;

§ 11. It shall be lawful for any society or institution established under the authority of this act, to pay directly into the bank of *England* any sum or sums of money not being less than 50*l.* to the account of the commissioners for the reduction of the national debt, upon the declaration of the trustees of such society or institution, or any two or more of them, that such monies belong exclusively to the society or institution for which such payment is intended to be made, whether such monies shall have been deposited therein before the passing of this act, or thereafter shall be deposited therein; and the cashier or cashiers of the bank of *England* are hereby required to receive all such monies, and place the same into a new and separate account, to be raised in the name of the said commissioners for the time being, in the books of the bank of *England*, to be denominated "The fund for the society or institution established at *A.*, in the county of *B.*, under an act of the fifty-ninth year of the reign of king *George* the third;" and all the clauses and provisions of stat. 57 *G.*3. *c.* 130., (intituled *An act to encourage the establishment of banks for savings in* England,) with respect to the accounts of banks for savings, and the regulation of debentures, certificates, or orders concerning the same, shall be applicable to the monies so paid into the bank of *England* under the authority of this act, as if the same had been repeated therein.

or vested in public funds, or on real security.

§ 12. Nothing in this act contained shall extend to prevent the trustees of any society formed under the authority thereof, from investing any part of the funds of such society in any public stocks or funds established by the authority of parliament, or from laying out the same upon real security at interest.

Limitation of responsibility of trustees.

§ 13. The trustees of any society or institution established under the authority of this act shall not be liable to make good

(*a*) Vide title Banks for Savings, Vol. I. p. 267.

any deficiency which may arise in the funds of such society, unless such persons shall have respectively declared by writing under their hands, deposited and registered in like manner with the rules of such society, that they are willing to be answerable; and it shall be lawful for each of such persons, or for such persons collectively, to limit his, her, or their responsibility to such sum as shall be specified in any such instrument in writing. 59 G.3. c.128.

§ 14. When the trustees of any society formed under the authority of this act shall be apprehensive that the funds of such society, together with the sum (if any) for which persons having formed the said society shall have made themselves responsible as aforesaid, are likely to prove insufficient to make all the payments becoming due to the several parties interested, according to the rules of such society, the said trustees shall forthwith state their apprehension, and the grounds thereof, to the justices in general or quarter sessions, or if the rules of such institution shall have been originally confirmed at the petty sessions, then to the justices, in such petty sessions; and it shall be lawful for such justices, upon a full statement of the accounts and proceedings of such society, which the said trustees are hereby directed to furnish at the requisition of such committee, to make such order for the adjustment of the claims of all parties interested in the funds of such society, as to them may appear fair and equitable: provided always, that it shall be lawful for any person who may think himself aggrieved by any such order of justices in petty sessions, to appeal therefrom to the justices assembled in the quarter sessions next ensuing after the date of such order, whose decision shall be final and conclusive. Proceedings of the trustees in case of deficiency of funds.

§ 15. And whereas by the said act of the 49 *G.* 3. *c.* 125. no sufficient provision is made for the relief of widows and children of deceased members of friendly societies, who may be aggrieved by the officers or members of the societies of which their husbands or parents were members; it is enacted, that justices of the peace shall have the like power and jurisdiction in cases of complaint made by or on behalf of such widows and children, as they have under the said last-mentioned act, or under this act, in regard to the members of such societies themselves. In cases of complaint of widows and children, justices to have jurisdiction.

§ 16. All the provisions of the said acts of 33 and 49 *G.* 3., as to matters for which no other provision is made by this act, shall be deemed, so far as the same are not repugnant to this act, applicable to all societies and institutions formed under the authority of this act. 33 G.3. c 54. 49 G.3. c.125. applicable to this act.

By stat. 57 *G.* 3. *c.* 39., after reciting that it is expedient to extend the relief, remedies, provisions, protections, and indemnities made, given, and provided by the "Act for the relief of persons equitably and beneficially entitled to or interested in the several stocks and annuities transferable at the bank of *England;*" and by the act, intituled "An act to extend the provisions of an act, passed in the thirty-sixth year of the reign of his present majesty, for the relief of persons equitably entitled to stocks and annuities transferable at the bank of *England;* and of an act, passed in this present session, for the relief of infant suitors entitled to the like stocks and annuities, to all other transferable stocks and funds," to certain cases herein specified, and not provided for by the said two acts, or by either of them; it is enacted, that the 57 G.3. c.39. 6 G.3. c.90. 52 G.3. c.158.

57 G. 3. c. 39. Extending certain provisions of recited acts to charity and friendly societies.

said acts, and all the relief and remedies, provisions, protections, and indemnities thereby provided, shall extend, and be deemed and taken to extend, and the same are hereby declared and enacted to extend, to all cases of petitions on which the court of chancery, or the lord high chancellor or commissioners of the great seal for the time being, or the master of the rolls, or the vice chancellor of *England* for the time being, or the court of exchequer, are by law authorized and empowered to grant relief and make summary orders without suit, either in matters of charity, or relative to or for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof; or in matters relative to any benefit or friendly societies, or for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof.

A.

A. Form of Complaint by a Member of a Friendly Society, under Stat. 33 *G.* 3. *c.* 54. § 15.

Staffordshire, to wit. } *BE it remembered, that on the* —— *day of* —— 1820, *at* —— *in the said county,* A. B. *of the parish of* —— *in the said county, baker, personally cometh before us* (*a*), J. P. *and* S. P. *esquires, two of his majesty's justices of the peace, acting in and for the said county, and upon his oath complaineth unto us, the said justices, for that he the said* A. B. *is a member of a certain friendly society, called* ——, *established at the said parish of* ——, *in the said county, under and by virtue of the statutes in such case made and provided; that by the rules and regulations of the said friendly society, duly allowed and confirmed by the general quarter sessions of the peace for the said county, every member of the said society, when sick or infirm, is entitled to be paid the sum of* —— *weekly, and every week, during the continuance of such his sickness or infirmity, from and out of the funds of the said society, by the steward thereof. That this complainant hath, for the space of one month now last past, been very sick and infirm, and unable to work, and that he hath made repeated applications to* A. S. *and* W. S., *stewards of the said society, for payment of the said weekly sum, due and payable to him by the said society during his sickness and infirmity, but hath been refused the same; wherefore the said* A. B. *prays the judgment of us, the said justices, in the premises, and that the said* A. S. *and* W. S. *may be summoned to answer to this complaint according to the directions of the statute in such case made and provided.*

A. B.

Exhibited before us this —— *day of* —— 1820. } J. P. S. P.

(*a*) By stat. 3 *G.* 4. *c.* 23. § 2. one justice may receive the complaint and issue a summons.

B. Summons thereon. B.

To Mr. A. S., *treasurer and steward of the Friendly Society, called* ———, *at* ———, *in the county of* Stafford.

Staffordshire, } *WHEREAS* A. B. *of* ———, *baker, a member*
to wit. } *of your society, hath this day made complaint upon oath before us, two of his majesty's justices of the peace, acting in and for the said county, that for one month now last past, he the said* A. B. *hath been very sick and infirm, and that during such his sickness and infirmity he is entitled to be paid by you, out of the funds of the said society, as a member thereof, the sum of* ——— *weekly, which said sum, on request so made, you have refused to pay him: These are, therefore, in his majesty's name, to summon you to appear before us at* ———, *in the said county, on the* ——— *day of* ——— *instant, at the hour of eleven in the forenoon, to answer the said complaint; and you are hereby also required to bring with you, and produce before us, the rules, orders, and regulations of the said society. Given under our hands and seals at* ——— *in the said county, this* ——— *day of* ——— 1820.

J. P.
S. P.

C. Information in case of a Member unjustly expelled. C.

[From Toone's M. M. 239.]

Staffordshire, } *BE it remembered* [as in the preceding informa-
to wit. } tion], *That he the said* A. B. *is a member of the friendly society called* ———, *held in the parish of* ———, *in the county aforesaid, the rules whereof are duly enrolled and confirmed, agreeable to the statutes in that case made and provided, and that he the said complainant was, at a meeting of the said society, held on the* ——— *day of* ——— *last, at the sign of* ——— *in the said parish of* ——— *in the county aforesaid, without any sufficient cause, unjustly, illegally, and contrary to the purport, true intent, and meaning of the rules of the said society, by the members thereof, then and there present, excluded from the said society, and all benefit and advantage which he hath a right to have or claim therefrom; and hereupon the said* A. B. *prayeth judgment of us in the premises, and that* K. L. *and* M. N. *the stewards of the said society may be summoned to answer the said complaint.*

Sworn before us, J. P. A. B.
S. P.

The summons to the stewards may be in the same form as the one preceding, varying the offence.

D.

D. Justices' Adjudication of Re-admission.

To K. L. *and* M. N., *stewards of the Friendly Society called* ——, *held at the sign of the* ——, *in the parish of* ——, *in the county of* ——.

Staffordshire, to wit. } WHEREAS A. B. *of the parish of* —— (*baker*) *in his proper person, on the* —— *day of* —— *now last past, in the* —— *year of the reign of our sovereign lord* George *the* ——, *by the grace of God of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith, at* —— *in the county aforesaid, made an information and complaint upon oath, before us,* J. P. *and* S. P., *esquires, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king, within the said county of* ——, *and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, whose names are hereunto set, and seals affixed, and residing near the parish of* —— *aforesaid, where the said society was established, and which oath we the said justices did then and there administer to him the said* A. B., *by which said information and complaint on oath aforesaid, the said* A. B. *deposed and said, that he the said* A. B. *then was a member of a certain friendly society called* ——, *held at the sign of* ——, *in the parish of* —— *aforesaid, in the county aforesaid, the rules, orders, and regulations of which said society had been exhibited in writing to the justices of our said lord the king, assigned to keep the peace of our said lord the king within the said county of* ——, *at the general quarter sessions of the peace holden in and for the said county, and by the said justices at their said sessions, after due examination, allowed and confirmed, and afterwards signed by the clerk of the peace at the said sessions, pursuant to the statute in that case made and provided; and that he the said* A. B. *had been a member of the said society for the space of* —— *years, and upwards, and that he had for* —— *years then passed, or thereabouts, been lame, and thereby rendered incapable of working at his calling; that he then did continue so, and that he had, during the time he was so lame, received the allowance from the said society until the month of* —— *then and now last, on the club-night of which month the members of the said society refused to pay him any further allowance, declined accepting his contribution money, and unjustly excluded him from the said society; and thereupon he prayed that justice might be done to him in the premises. And whereas on* —— *the* —— *day of* ——, *in the year aforesaid, at* ——, *in the county aforesaid,* K. L. *and* M. N., *two of the stewards of the said society, pursuant to our summons issued for that purpose, and also* A. P. *a member of the said society, appeared before us the said* J. P. *and* S. P., *and also* J. C., *one other of the justices of our said lord the king, assigned to keep the peace of our said lord the king within the said county of* ——, *and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and also residing near the parish of* —— *aforesaid, where the said society was established, and the said* A. B. *being also then and there present, we the said justices aforesaid did then and there proceed to*

hear and determine, and did hear and determine the matter of the said complaint, according to the true purport and meaning of the rules, orders, and regulations of such society, confirmed by the justices, according to the direction of the said statute; and thereupon we do order and adjudge, by virtue of the said statute, that the said A. B. *be re-admitted into the said society, and into all the benefits and advantages arising therefrom; and we do order and require you the stewards and members of the said society, to re-admit the said* A. B. *into the said society, and unto all the benefits arising therefrom accordingly.*

Given under our hands and seals, at ——— aforesaid, in the county aforesaid, the ——— day of ———, in the said —— year of the reign of our sovereign lord George *the ——, by the grace of God of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith, and in the year of our Lord ———.*

J. P. (L. S.)
S. P. (L. S.)

E. Form of a Memorial under Stat. 59 *G.* 3. *c.* 128. § 2. *ante*, p. 533. [From Toone's M. M. 237.] E.

To the Worshipful His Majesty's Justices of the Peace for the County of ———, in their General Quarter Session of the Peace assembled.

The humble Memorial and Petition of A. B., C. D., &c.
Sheweth,

THAT your memorialists are desirous of forming themselves into a friendly society to provide by contribution for the maintenance or assistance of the members thereof, their wives and children, in sickness, infancy, old age, and widowhood, under the authority and subject to the provisions of a certain act of parliament made and passed in the 59th year of the reign of his late majesty king George *the third, intituled* "An act for the further protection and encouragement of friendly societies, and for preventing frauds and abuses therein." *And we propose that* E. F. *of* ——, G. H. *of* ——, *and* J. K. *of* ——, *all substantial householders, and whose hands are hereto subscribed and set, be the trustees of such society, and that the said society be governed by the rules, orders, and regulations following; that is to say* [here set forth the rules].

All which rules, orders, and regulations, we humbly submit to your worships for your approval, pursuant to the statute in that case made and provided.

To be signed by the trustees and other persons proposing to become members. At the foot thereof the justices will sign their allowance.

WE ———, his majesty's justices of the peace assembled at our general quarter sessions at ———, in the county of ———, on ———, the ——— day of ———, have perused and do approve of the foregoing rules, orders, and regulations, and we do consent to the same being enrolled pursuant to the statute in that case made and provided. Dated this ——— day of ———.

When so done, get the rules fairly copied on parchment and taken to the clerk of the peace, who will enrol them.

Should it be necessary at any time to amend the rules of a friendly society, the following form will serve for that purpose; and when the proposed amendments or alterations are added, they must be written on parchment and enrolled in the same manner as the original rules; a memorial being first presented as in the case of the original rules.

F. F. Alterations and Amendments to the Rules, Orders, and Regulations of the Society called ———, now held at ———, in ———, in the County of ———.

WHEREAS it is deemed expedient that certain alterations should be made to the rules, orders, and regulations of the above society (which were allowed and confirmed at the general quarter session of the peace, held in and for the county of ———, on ———, the ——— day of ———, 18———;) and a general meeting of the members convened by the secretary, in pursuance of a requisition for that purpose, from several members of the said society, having been held at ——— aforesaid, on ———, the ——— day of ———, 18———, for the purpose of taking the same into consideration; the following alterations and additions to the said rules, orders, and regulations, were unanimously agreed to by the members then and there present, the said alterations and additions having also been unanimously agreed to at two usual meetings of the said society; to wit, on the ——— day of ———, and the ——— day of ——— held next before such general meeting, and are as follows: — [Copy the alterations.]

Fruit and Fruit Trees. See **Wood.** Vol. V.

Fuel.

[Stats. 43 Eliz. c. 14. — 9 Ann. c. 15. — 10 Ann. c. 6.]

43 Eliz. c. 14. BY stat. 43 *Eliz. c.* 14. all faggots to be sold shall contain in compass, besides the knot of the bond, 24 inches of assize; and every faggot-stick within the bond, shall contain full three foot of assize, except only one stick to be but one foot long, to stop or harden the binding.

9 Ann. c. 15. By stat. 9 *Ann. c.* 15. § 1. all billets (except those made of beech, 10 *Ann. c.* 6.) that lie exposed in public places where they are usually bought or sold, shall be assized, and cut or marked in manner following; that is to say,

All billets of what scantling or denomination soever shall contain in length three foot and four inches, and be of the following dimensions; viz.

9 Ann. c. 15.

Names of the billets.	Round.		Half round.		Quarte cleft.		
	in.	qr.	in.	qr.	in.	qr.	
A single	7	2	0	0	0	0	No notch.
A cast	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle.
2 cast	15	0	17	1	17	0	Two notches.
3 cast	18	1	21	1	21	0	One at each end and one in the middle.
4 cast	21	1	24	2	24	0	4 notches.
5 cast	23	3	27	2	27	0	5 notches.
6 cast	26	0	30	0	29	2	6 notches.
7 cast	28	0	32	2	32	0	7 notches.
8 cast	30	0	34	3	34	0	8 notches.
9 cast	31	3	36	3	36	1	9 notches.
10 cast	33	2	38	3	38	0	10 notches.
11 cast	35	1	——		——		11 notches.
12 cast	36	3	——		——		12 notches.
13 cast	38	1	——		——		13 notches.
14 cast	39	3	——		——		14 notches.
15 cast	41	0	——		——		15 notches.
16 cast	42	2	——		——		16 notches.
17 cast	43	3	——		——		17 notches.
18 cast	45	0	——		——		18 notches.
19 cast	46	1	——		——		19 notches.
20 cast	47	2	——		——		20 notches.

§ 2. And if they shall not be thus assized and marked, then on information to a justice of the peace, mayor, or other head officer, he shall call before him six good and lawful men of the town, and shall swear them truly to inquire and present whether the same be of good and sufficient assize; and if they shall present that any of them is not sufficient, the same so being deficient shall be forfeited, and be delivered to the overseers, to be by them distributed to the poor.

And by stat. 43 *Eliz. c.* 14, the billets shall be measured within six inches of the midst; and the surplusage which shall happen between any two next measures, being above the one, and under the other, shall be taken for the benefit of the buyer. 43 Eliz. c. 14.

Fuller's Earth. See **Woollen Manufacture.** Vol. V.

Furze, Burning it in Forests. See **Burning,** Vol. I.

Game:

THE statutes relating to this title are very numerous, and the sense sometimes a little perplexed, so that, perhaps, upon a view of the whole, it may seem that about four or five new acts, comprehending the several heads hereafter mentioned, and repealing all the preceding, would conduce to render this branch of our laws more intelligible and useful.

8 G.1. c.19. Penalties how to be recovered in general.

After having first premised (in order to avoid frequent repetitions throughout this title), that it is enacted by stat. 8 *G.* 1. *c.* 19. that where any person for any offence against *any law in being at the making of the said act*, for the better preservation of the game, shall be liable to pay any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may sue for the same (before the end of the second term after the offence committed, stat. 26 *G.* 2. *c.* 2.) by action of debt, or on the case, bill, plaint, or information, in any court of record at *Westminster*, wherein if he recover he shall have double costs: provided, that the offender shall not be prosecuted both ways; and in case of a second prosecution, he may plead in his defence the former prosecution pending, or the conviction or judgment thereupon had. And by stat. 2 *G.* 3. *c.* 19. § 5. whereas a moiety of the said penalty by several acts is directed to be applied to the use of the poor of the parish where the offence was committed, by reason whereof inhabitants of the said parish have been disallowed to give evidence, it is enacted, that it shall be lawful for any person to sue for *the whole of such penalty* to his own use, and if he recover he shall have double costs; such action to be brought within six months after the offence committed. But by stat. 27 *G.* 3. *c.* 29. where any pecuniary penalty or part thereof is given to the poor, the inhabitants of every such parish or place shall be deemed competent witnesses to prove any offences committed therein, notwithstanding that the penalty incurred or any part thereof be given or applicable to the poor of such place, or for the benefit or use thereof; unless such penalty exceed 20*l.* [See, however, under its proper head stat. 52 *G.* 3. *c.* 93. *sched.* (L), providing in a special manner for the recovery of certain of the penalties relating to the game laws.] This being premised, I will treat of this subject under the following heads:—

26 G.2. c.2. 2 G.3. c.19. Costs. 27 G.3. c.29. Inhabitants may be witnesses. 52 G.3. c.93. sch. (L.)

— 5 Ann. c. 14. — 28 G. 2. c. 12. — 13 G. 3. c. 30. — 58 G. 3. c. 75.]

IV. *Certificate to be taken out.*
[24 G. 3. sess. 2. c. 43. — 25 G. 3. c. 50. — 52 G. 3. c. 93. Sched. (L). — 54 G. 3. c. 141.]

V. *Concerning Gamekeepers.*
[22 & 23 C. 2. c. 25. — 5 Ann. c. 14. — 9 Ann. c. 25. — 3 G. 1. c. 11. — 25 G. 3. c. 50. — 48 G. 3. c. 93. — 52 G. 3. c. 93. Sched. (L). — 59 G. 3. c. 102.]

VI. *Prevention of Persons going armed by Night for the Destruction of Game.*
[57 G. 3. c. 90. — 3 G. 4. c. 114.]

VII. *Laws for preserving the four-footed Game in particular.*
[For the statutes see the head of this section.]

VIII. *Laws for preserving the winged Game in particular.*
[For the statutes see the head of this section.]

§ I. Property in Game.

Before we take notice of the statutes made for the preservation of the game, it may be requisite to observe how the common law stood herein; which depends upon the difference between *tame* and *wild* animals. 3 *Bac. Abr.* 324.

Tame animals.

The tame animals, such as *horses, cows, sheep*, and the like, are such creatures as by reason of their sluggishness and unaptness for motion do not fly the dominion of mankind, but generally keep within the same pastures and limits, and may be easily pursued and overtaken, if by accident they should escape; and therefore the owner hath the same kind of property in them as he hath in all inanimate chattels, and for the violation thereof may bring an action of trespass. 3 *Bac. Abr.* 324.

Wild animals.

The wild animals, such as *deer, hares, foxes*, and such like, are those, which by reason of their swiftness or fierceness fly the dominion of man; and in these no person can have a property, unless they be tamed or reclaimed by him. (*a*) And as property is the power that a man hath over any other thing for his own use, and the ability that he hath to apply it to the sustentation of his being, when that power ceaseth, his property is lost; and, by consequence, an animal of this kind, which after any seizure escapes into the wild common of nature, and asserts its own liberty by its swiftness, is no more mine than any creature in the *Indies*, because I have it no longer in my power or disposal. 3 *Bac. Abr.* 324.

(*a*) Mr. *Christian* mentions a case at *York* in which 10*l.* damages were given for a tame fox, which had got loose and been taken by the defendant. One of the plaintiff's servants proved, at the trial, that he knew the fox, and that the fox knew him; for when he saw it again, and called it by its name, it crouched and rolled at his feet, as a spaniel would do at seeing his former master again. *Christian's G. L.* 261.

Hence, it appears that by the common law every man had an equal right to such creatures as were not naturally under the power of man, and that the mere caption or seizure created a property in them. By immediate taking and killing them, they belong to such person in the same manner as any other chattels, and cannot be taken from him; since the first seizure and caption was sufficient to vest the property of them in him. 3 *Bac. Abr.* 324.

Also by taking and taming them, they belong to the owner, as do the other tame animals, so long as they continue in this condition, that is, as long as they can be considered to have the mind of returning to their masters; for while they appear to be in this state, they are plainly the owner's, and ought not to be violated; but when they forsake the houses and habitations of men, and betake themselves to the woods, they are then the property of any man. 3 *Bac. Abr.* 325.

Another way of gaining property in them is by inclosure; and then the beasts must be understood to be mine, as the profits or the soil itself are; and they can no more be taken and carried off than any other profits of the land. Therefore if deer be inclosed in a park or paddock, or conies in a field or warren, they become so much a man's own that no one ought to kill or take them away. And since in this case it is the inclosure that retains them, (for take away the inclosure, and they are in their natural liberty,) therefore the party is said to have right as he hath to any other profits there inclosed, and a distinct and independent right in every animal. 3 *Bac. Abr.* 325. *Davies* v. *Powell*, *Will. Rep.* 46.

It is a maxim of the common law that such goods, of which no one can claim any property, belong to the king by his prerogative; and hence all those animals *feræ naturæ*, which come under the denomination of *game*, are styled in our laws H. M.'s game; and that which he hath, he may grant to another; and consequently another may prescribe to have the same within such a precinct or lordship. And from hence cometh the right of lords of manors or others unto the game within their respective liberties. [But this doctrine, "that the sole property of all the game is "vested in the king alone," is controverted by Mr. *Christian* in his comment on the commentator. 2 *Blac. Com.* 419. *n.* 10., and also in his *Treatise on the Game Laws*, cap. 2.]

§ II. General Observations concerning Forests, Chases, Parks, and Warrens, and Trespass in pursuing Game; and herein of setting Spring Guns, &c.

Forest, what.

* A *forest* is a certain territory of woody grounds and fruitful pastures, privileged for wild beast and fowls of forest, chase, and warren, to rest and abide there in the safe protection of the king for his delight and pleasure; which territory of ground so privileged is meered and bounded with unremovable marks, meers, and boundaries, either known by matter of record or by prescription; and also replenished with wild beasts of venery or chase, and with great coverts of vert for the succour of the said beasts there to abide; for the preservation and continuance of which, there are particular officers, laws, and privileges, belonging to the same,

requisite for that purpose, and proper only to a forest and to no other place. *Manw.* (a) 143.

Note: that vert comprehends every thing which bears green leaves in the forest. *Manw.* 146.

And the lord having the wood in the tenant's land, which is still customary in many manors, was originally for preservation of the vert, for the sustenation of the lord's game there.

Beasts of forest are properly hart, hind, buck, hare, boar, and wolf; but legally all wild beasts of venery. 1 *Inst.* 233. Beasts of forest.

Purlieu comes from the French *pur*, clear, entire, and exempt, and *lieu* a place; that is a place, entire, clear, or exempt from the forest: and signifies those grounds which *Henry* the second, *Richard* the first, or king *John*, added to their ancient forests, over other men's grounds, and were disafforested by the statute of *charta de foresta*. 4 *Inst.* 303. *Manw.* 242. Purlieu, what.

But nevertheless the *purlieu*, as to some purposes, is forest still, and is disafforested as to the particular owners of the land, and for their benefit, and not generally to give liberty to any man to hunt the wild beasts and spoil the vert. And if those beasts escape out of the forest into the *purlieu*, the king hath a property in them still against any man but against the owners of the woods and lands in which they are; and such owners have a special property in them *ratione loci*, but yet so that they hunt them fairly and not forestall them in their return towards the forest. *Manw.* 292.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and therefore if he find the beasts of the forest in his woods or lands in the *purlieu*, in such case he hath property in them against any other man *ratione soli* (the king only excepted). And if he begin the hunting in his own lands, then by reason of that property he may pursue his hunting through any man's woods or lands, so as he doth not enter into any forest, chase, park, or warren. And if he kill the beast in another man's land, and out of such privileged place, he may take and carry away the same by reason of the first property. But if the beast recover the forest, he must call back his dogs, for they are then the king's wild beasts again. And if he do not call back and rebuke his dogs, and they kill the beast in the forest, he is a trespasser, though himself never came within the bounds thereof. But if in hunting towards the forest the dogs fasten on it before it is within the bounds thereof, and the dogs still hanging on are drawn by the deer into the forest, and it is killed there, then by reason of the first property which he had *ratione soli*, and also by the pursuit and possession thereof before it entered the forest, he may lawfully enter and take it. *Manw.* 294.

A *chase* (from *chasser* to chase) is a privileged place for receipt of deer and beasts of the forest, and is of a middle nature betwixt a forest and park. It is commonly less than a forest and not endowed with so many liberties, as officers, laws, courts, and yet is of a larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differeth from a park in that it is not inclosed; for if it be in- Chase, what.

(a) Manwood's Treatise on the Forest Laws is a very learned and amusing book, written in the reign of Queen *Elizabeth*. *Christian's G. L.* 2.

closed, it is a good cause of forfeiture; though it must have certain metes and bounds, but it may be in other men's grounds as well as in one's own. *Manw.* 49. 147.

Beasts of chase. Beasts of chase are, the buck, doe, fox, martern (*a*), and roe. *Manw.* 144.

Park, what. A *park* (from the French *parquer* to inclose) is a large parcel of ground privileged for wild beasts of chase by the king's grant, or by prescription. *Read.* Game.

Beasts of park. The beasts of park properly extend to the buck, doe, fox; but in a common and legal sense to all the beasts of the forest. *Id.*

Park to be inclosed. A park must be inclosed; for if it lie open, it is a good cause of seizure into the king's hands, as a thing forfeited; and the owner cannot have an action against those that hunt in his park, if it lies open. *Id.*

Deer shall go to the heir. Deer in a park shall go to the heir, and not to the executor. 1 *Inst.* 8.

Warren, what. A *warren* is a place privileged by prescription or grant of the king, for the preservation of the beasts and fowl of the warren, *viz.* hares, conies, partridges, and pheasants. *Manw.* 44.

Need not be inclosed. A free warren may lie open, there being no necessity of inclosing it. *Read.* Game.

Conies shall go to the heir. Conies in a warren shall go to the heir, and not to the executor. 1 *Inst.* 8.

License to erect. It is not lawful for any person to make any chase, park, or warren, in his own freehold, or elsewhere, to keep in it any wild beasts or birds of forest, chase, park, or warren, without the king's grant or warrant so to do; and if any man do, he is to be punished in a *quo warranto*, and the franchise to be seized into the king's hands. *Manw.* 56.

Rex v. Sir *William Lowther*, 2 Ld. *Raym.* 1409. 1 *Stra.* 637. It was moved for leave to file an information in nature of a *quo warranto* against Sir *William Lowther*, to shew by what authority he had made and set up a warren. But it was denied by the court: because they said it was of a private nature only. And the like motion had been denied before, in the case of the Lord *Lisburne*.

Hunting in a free warren. In an action of trespass for entering a free warren, and which is sustainable even against the owner of the soil, though damages are under 40*s.*, the plaintiff is entitled to full costs; for, as observed by *Blackstone* J. "In actions, instituted merely for breaking free warren, it is impossible the title to the soil can ever come in question; for though both may concur in one person, yet the title to the free warren is always collateral to that of the land; for a man may have a free warren *in alieno solo*." Besides, the hare which was hunted was the personal property of the owner of the free warren; and if any injury be done to personal property, that will take it out of the statute, and entitle the plaintiff to full costs. *Lord Dacre* v. *Tebb*, 2 *Black. Rep.* 1151. 2 *Chitty G. L.* 21.—1166.

A man may have free warren in another's land.

Which of these is the highest franchise. A forest is the highest franchise of princely pleasure; the next to that is a free chase; a chase, in one degree, is the same as a park, only a park is inclosed, and a chase is always open; the next in degree to a free chase is a park; and the next unto

(*a*) A large kind of weasel, whose fur is much valued. *Johnson's Dict.*

a park is the franchise of a free warren. And a forest comprehends in it a chase, park, and warren. And for that cause, the beasts of chase, and the beasts and fowls of warren, are privileged within a forest as well as the beasts of the forest are. *Manw.* 52.

Common in a chase. A person may have common in a chase, as well as in a forest, but a forest is governed by the forest law, and a chase and park by the common law. 4 *Inst.* 314. *Manw.* 52.

And by the common law (says *Blackstone*) no person is at liberty to take or kill any beasts of chase, but such as have an ancient chase or park; unless they be also beasts of prey. 2 *Blac. Com.* 416.

If I find a pheasant in my lands, and I let my hawk fly, I may follow the flight into another man's land by reason of the first property which I had in the pheasant *ratione soli;* and if my hawk kill the pheasant in another man's land, I may enter and take it, by reason of that property and pursuit: and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entering the ground. But if the pheasant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren. And the law is the same in the cases of all wild beasts of the forest and chase. *Manw.* 389.

But one who finds game on his own ground, cannot justify pursuing it into the land of another. *Deane* v. *Clayton,* Bart. 7 *Taunt.* 489.

Trespass in going upon another's ground. No man can come upon another man's ground to kill game, without being liable to an action of trespass. 2 *Bac. Abr.* 613. 2 *Bla. Com.* 417. 2 *Blac. Rep.* 900.

In trespass for breaking and entering the plaintiff's closes, and sporting there, under circumstances of aggravation, the jury gave 500*l.* damages. The court refused to set aside the verdict. *Merest* v. *Harvey, E.* 54 *G.* 3. 1 *Marsh.* 139. This was an action of trespass for breaking and entering the plaintiff's closes, and with dogs and guns beating and hunting for game. The defendant suffered judgment to go by default, the damages to be assessed before a judge of assize, and which were assessed accordingly before *Heath* J. at *Thetford* spring assizes 1814, to the amount of 500*l.* being the extent of the damages laid in the declaration. On motion for a rule to set aside the verdict, on the ground of excessive damages, *Heath,* J. briefly stated the circumstances, which were that the defendant, who was a magistrate, had committed a trespass before the plaintiff's face, in defiance of the plaintiff's notice, that he was a trespasser, and accompanying the injury by every kind of insult and aggravation.—*Gibbs* Ch. J. said, When a man disregards the conduct and principles of a gentleman and of a magistrate, what is to prevent the repetition of such conduct but large damages? what should we say to a man in any inferior station in life, who should so conduct himself? I know not on what principle we could grant a rule in this case, except on the ground that the jury should only have found to the amount of the actual pecuniary damage sustained by the plaintiff; suppose I had a walk before my house, which I had a pleasure in looking at, or in walking upon, should it be allowed that a man should walk there to my annoyance, and then offer me a halfpenny in satisfaction, alleging that I had received no actual damage? This is a much stronger case, for no conduct could have been more out-

Merest v. Harvey.

rageous than that of the defendant on this occasion. — *Heath* J. I left it to the jury to say what damages would be a compensation, and it never can be contended that these were too much. I remember a case many years ago, where the jury gave 500*l.* for merely throwing off a man's hat, and the court refused to set aside the verdict. *Per curiam.* Rule refused.

And in *Reynold* v. *Edwards*, 6 *T. R.* 11., which was an action of trespass tried before *Buller* J. at *Staffordshire* assizes, where it appeared in evidence that a trespass was committed by the defendant in coursing over a close belonging to the plaintiff, who four years before had given a general notice to all persons not to trespass on his lands; and where it also appeared that the defendant was anxious to avoid trespassing on the plaintiff's grounds, and had made enquiries respecting his boundaries; the plaintiff's counsel pressed the judge to certify that the trespass was wilful and malicious, in order to entitle the plaintiff to full costs under 8 & 9 *W. c.* 11. § 4. (*a*); and the judge conceiving that he had no discretion on the subject accordingly certified, reserving liberty to the defendant to move to set aside that certificate, if this court should be of opinion that the statute was not compulsory on the judge. — Afterwards a motion was made to that effect. But the *court* refused to grant the rule, saying, that in the case of *Swinnerton* v. *Jarvis, E.* 22 *G.* 3., in the Common Pleas, it was determined that if it appeared that the trespass, however trifling, was committed after notice, the judge was bound to certify under the statute; and that it was proper to adhere to that as an universal rule.

But although the judges have always certified, after notice not to trespass in pursuit of game, they are not bound to certify after notice in other trespasses. *Good* v. *Watkins*, 3 *East*, 498.

It appears to have been ruled by Lord *Ellenborough* C. J. at N. P. that a person discharging a gun from the outside of a field into it, so as the shot must have struck the soil, was guilty of breaking and entering the field. See *Pickering* v. *Rudd*, 4 *Campb.* 220. 1 *Stark. N. P.* 58. *S. C.*

No trespass in following beasts of prey.

Notwithstanding the common law allows of the hunting of foxes and badgers, being beasts of prey, in another man's ground, because the destroying of them is looked upon as a public benefit; [and in *Gundry* v. *Feltham*, 1 *T. R.* 334., it was ruled on demurrer that the defendant was justified in *following* over the plaintiff's grounds a fox that had been started in another person's ground,] yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case. *Cro. Jac.* 321.

Fox hunting when illegal.

With respect to the case of *Gundry* v. *Feltham*, Mr. *Christian* observes, that the judgment was only justified by the pleadings, which admitted that the riding after the fox, in that case, was the only means of killing it. *Christian's G. L.* 114.

But in the case of *The Earl of Essex* v. *Capel*, at *Hertford* Sum. Ass. 1809, where the subject was properly pleaded upon the record, Lord *Ellenborough* C. J. directed the jury to find for the

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Wilful trespass.

(*a*) Stat. 8 & 9 *W. c.* 11. § 4. enacts, that in all actions of trespass where at the trial it shall appear and be certified by the judge under his hand, upon the back of the record, that the trespass was wilful and malicious, the plaintiff shall recover not only his damages, but his full costs of suit.

plaintiff, if they thought from the evidence that the defendant pursued the fox for his own pleasure and amusement, and if they thought the good of the public was not his sole governing motive. *Christian's G. L.* 114. 2 *Chitty's G. L.* 1381. *S. C.*

Foxhunters, like all other hunters, may be warned off; and the plaintiff by the judge's certificate will have full costs, though the jury do not give 40*s*. damages. *Ib.*

A gamekeeper cannot justify killing the dog of a person following game within the boundaries of the manor.

Vere v. *Lord Cawdor and King*, 11 *East*, 568. In this case, which was an action of trespass for shooting and killing a dog of the plaintiff, there was a plea of not guilty, and a special plea that Lord *Cawdor* was lord of the manor, and the defendant gamekeeper, duly deputed and appointed to preserve the game upon the manor; that the dog was in a close, parcel of the manor, *running after, chasing*, and hunting divers hares there, and that the defendant, *King*, as such gamekeeper, in the said close, *for the preservation of the said hares*, shot and killed the said dog. — To this plea there was a demurrer; and after argument, Lord *Ellenborough* C. J. said, The question is, whether the plaintiff's dog incurred the penalty of death for running after a hare in another's ground? And if there be any precedent of that sort, which outrages all reason and sense, it is of no authority to govern other cases. There is no question here as to the right of the game. The gamekeeper had no right to kill the plaintiff's dog for following it. The plea does not even state that the hare was put in peril, so as to induce any necessity for killing the dog in order to save the hare. —— *Per curiam*. Judgment for the plaintiff.

If a man place dangerous traps, baited with flesh, in his own ground, so near to a highway, or to the premises of another, that dogs passing along the highway, or kept in his neighbour's premises, must probably be attracted by their instinct into the traps; and in consequence of such act his neighbour's dogs be so attracted, and thereby injured, an action on the case lies.

Townsend v. *Wathen*, 9 *East*, 277. In an action for placing traps baited with flesh and strong-scented articles, by which the plaintiff's dogs were enticed from the public highways to the said traps, and were caught therein and wounded, there was a verdict for the plaintiff; and the court of K. B. refused to arrest the judgment, there being no doubt but the action was maintainable. — A rule *nisi* was, however, granted for setting aside the verdict, as against the evidence; and after hearing the grounds of objection against it, Lord *Ellenborough* C. J. said, It appears by the evidence reported, that the traps were placed so near to the plaintiff's court yard, where his dogs were kept, that they might scent the bait, without committing any trespass on the defendant's wood. Every man must be taken to contemplate the probable consequences of the act he does; and, therefore, when the defendant caused traps scented with the strongest meats to be placed so near to the plaintiff's house as to influence the instinct of those animals, and draw them irresistibly to their destruction, he must be considered as contemplating this probable consequence of his act. That which might be taken as general evidence of malice against all dogs, coming accidentally within the sphere of the attraction which he had placed there, must surely be evidence of it against those in particular which were placed nearest to the source of attraction, and within the constant influence of it. What difference is there in reason between drawing the animal into the trap by means of his instinct, which he cannot resist, and putting him there by manual force? If a man knowingly keep a dog accustomed to bite, and any person coming by chance in his way be bitten, an action lies against the owner (*a*), though he had no malice against the parti-

(*a*) See *Judge* v. *Cox*, 1 *Stark. N. P.* 285.

cular individual. Here there is evidence that the defendant's purpose in setting the traps was to catch dogs in general, as well as vermin; for he afterwards recompensed his servant for dogs taken in the traps. The rule, therefore, *omnis ratihabitio retro trahitur et mandato æquiparatur*, applies to this case. Without, therefore, considering what had happened before the plaintiff came to his residence in the defendant's neighbourhood; when he did come, he came to a place where the mischief existed and continued to operate within the sphere where he might lawfully have his dogs, and which in fact did afterwards operate upon them to the plaintiff's prejudice. The other judges agreeing, the rule was discharged.

Dean v. *Clayton*, Bart.—7 *Taunt.* 489.—2 *Marsh*, 577.—1 *Moore*, *C.P.* 203. Sir *William Clayton*, the defendant, was owner and occupier of a wood adjoining another wood belonging to *T.*, divided therefrom by a low bank and a shallow ditch, not being a sufficient fence to prevent dogs from passing from *T.*'s wood into the defendant's wood. There were public footpaths through the defendant's wood, not fenced off therefrom. The defendant, to preserve hares in his wood, and to prevent them from being killed by dogs and foxes that came therein in pursuit of hares, kept iron spikes (called *dog-spears*) screwed and fastened into several trees in his wood, each spike having two sharp ends, and so placed that each end should point along the course of a hare-path, and purposely placed at such a height from the ground as to allow a hare to pass under them without injury, but to wound and kill a dog that might happen to run against one of the sharp ends thereof, the spikes being, from their nature and positions, adapted to effect the purpose for which the defendant fastened them there: none of them was less distant than 50 yards from any footpath, and some were from 150 to 160 yards distant therefrom. The defendant kept notices painted on boards placed at the outside of some parts of the wood, that steel-traps, spring-guns, and dog-spikes were set in that wood for vermin. The plaintiff, with *T.*'s permission, was sporting in *T.*'s wood with a valuable pointer; a hare rose in his wood, and was pursued by the dog thereout, over the bank and ditch, into the defendant's wood, and in the pursuit there, ran against one of the sharp spikes, and was killed. The plaintiff endeavoured, as much as in him lay, to prevent his dog from pursuing the hare into the defendant's wood, but was unable so to do. The plaintiff having brought an action upon the case against the defendant to recover a compensation for the loss of his dog, the court of C. P. were equally divided in opinion whether the action were maintainable: *Gibbs* C. J. and *Dallas* J. holding that it was not, and *Park* and *Burrough* Js. holding that the plaintiff was entitled to recover.

Setting spring guns or man traps.

On the legality of setting spring-guns in woods or inclosed grounds, to prevent depredations, much difference of opinion has prevailed amongst learned men. See *Christian's G. L.* 278. to 285. The following case upon this subject has recently been decided by the court of K. B.

A trespasser, having knowledge that there are spring-guns in a wood, although he may

Ilott v. *Wilkes*, *H.* 60 *G.* 3. and 1 *G.* 4.—3 *B.* & *A.* 304. Declaration stated that defendant was possessed of a wood called *Chrishall Wood*, in the county of *Essex*, over and along a certain part of which there was a right of way for all the king's subjects on foot, in the day and at other times; and that defendant, before the committing of the grievances, had set a certain spring-gun, charged

with gunpowder and leaden shot, in a certain part of said wood and premises, near those parts over which the right of way extended, with a certain wire communicating with the lock and other parts of the said spring-gun, by the treading on or touching of which wire, the said gun could be let off and fired, with intent to lacerate, wound, and injure persons coming into that part of the wood where the gun was set and placed; and that the wire was laid across in the day-time as well as the night-time; and that it was the duty of the defendant not to have permitted the said gun to remain so loaded and charged, and with the said wire communicating with the lock and other parts thereof, without causing notice to be given to persons passing along the said wood in the day time, of the said gun being so situate and placed, and of the direction and place where the said wire so communicating with the lock and other parts thereof, was placed, in order to prevent persons through ignorance treading on or touching the wire so communicating with the lock, and thereby letting off the gun and being injured by the discharge; that defendant wilfully, negligently, and with the intent aforesaid, permitted the said gun to remain in a part of the wood, loaded, &c., with the wire communicating, &c., without giving notice to persons passing along the wood in the day-time of the direction or places in which the wire communicating with the lock was placed or laid, by means whereof plaintiff, being in the said part of the wood in the day-time, and not having any knowledge, notice, or warning of the place or direction where the wire communicating, &c., was laid or placed, trod upon and touched the wire communicating with the lock, and by reason thereof the gun went off and discharged several shot, and plaintiff was thereby injured. The second and third counts did not differ substantially from the first. The fourth count charged, that defendant suffered the spring-guns to remain loaded in the wood, &c., without taking *due and proper means* to prevent persons in the wood from being injured thereby, by reason whereof plaintiff was injured. The fifth count stated, that the defendant knowingly, wrongfully, and unlawfully, permitted a spring-gun, loaded, &c., to remain so loaded, &c., by means whereof plaintiff, not knowing, and not being able to perceive where the wire was placed, in the day-time unavoidably trod upon the wire, by which the gun was fired, &c. The sixth count charged the defendant with having unlawfully placed the guns in the wood, without any *sufficient or legal notice* to H. M.'s subjects; and that plaintiff, being a liege subject, and not being able to perceive where the gun or spring-wire was, did, unknowingly, for want of sufficient legal notice, tread upon the wire, &c. The seventh count stated, that defendant, wrongfully and maliciously, placed in certain lands a spring-gun, loaded, &c.; and that plaintiff, in walking and passing along the said land, unknowingly trod upon the wire, &c. Plea, not guilty. At the trial before *Garrow* B., at the last Summer assizes for the county of *Essex*, the following facts were given in evidence: The defendant was the owner of *Chrishall Wood*, consisting of fifty or sixty acres; and by his order, nine or ten spring-guns were set there. Several boards were affixed, containing notice to the public that such instruments were so placed. There formerly had been a path on the outside of the wood, but it had not been used for some years. The plaintiff, on the oc-

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be ignorant of the particular spots where they are placed, cannot maintain an action for an injury received in consequence of his accidentally treading on the latent wire communicating with the gun, and thereby letting it off.

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protection of property; and even if they were insufficient, it is not competent to an individual to have recourse to a contrivance, the effect of which may be to inflict wounds, or even death, upon a mere trespasser.— *Abbott* C. J. We are not called upon in this case to decide the general question, whether a trespasser sustaining an injury from a latent engine of mischief, placed in a wood or in grounds where he had no reason to apprehend personal danger, may or may not maintain an action. That question has been the subject of much discussion in the court of C. P., and great difference of opinion has prevailed in the minds of the learned judges, whose attention was here called to it. Nor are we called upon to pronounce any opinion as to the inhumanity of the practice, which in this case has been the cause of the injury sustained by the plaintiff. That practice has prevailed extensively and for a long period of time, and although undoubtedly I have formed an opinion as to its inhumanity, yet at the same time I cannot but admit that repeated and increasing acts of aggression to property may perhaps reasonably call for increased means of defence and protection. I believe that many persons who cause engines of this description to be placed in their grounds do not do so with the intention of injuring any one, but really believe that the notices they give of such engines being there will prevent any injury from occurring, and that no person who sees the notice will be weak and foolish enough to expose himself to the perilous consequences likely to ensue from his trespass. In this case it is found by the jury that the plaintiff actually knew that spring-guns were set in this wood. Now, sitting in a court of law, we cannot say that an action may be maintained against the defendant for doing an act like the one in question, if it be not in itself unlawful. The jury have found that the plaintiff (before he entered the wood) knew that engines like that by which he suffered in consequence of his trespass were placed there; to him, therefore, they ceased to be latent engines of mischief; and the degree of injury sustained cannot vary the case in principle. The court, therefore, cannot hold that this action is maintainable, unless they are also prepared to say, that any trespasser who should hurt himself by coming in contact, in the dark, with spikes or broken glass stuck on a wall, which at that time would be invisible, could maintain an action against the owners, in a case where it appeared that he had had a previous opportunity of observing in broad day-light that such means of mischief were placed upon the wall. But in that case I believe no lawyer will argue that an action could be maintained. I am not able to distinguish this case from that which I have put. Considering the present action merely on the ground of notice, and leaving untouched the general question as to the liability incurred by placing such engines as these where no notice is brought home to the party injured, I am of opinion that this action cannot be maintained. — *Bayley* J. Nothing that falls from me shall have a tendency to encourage the practice, which, to a certain extent, has prevailed, of setting these engines for the protection of property, the consequence of which sometimes has been to cause great bodily injury to persons entirely ignorant of the existence of engines of this description. Such instruments may be undoubtedly placed without any intention of doing injury, and for the mere purpose of protecting property by means of terror; and it is ex-

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H. M.'s subjects. The declaration, therefore, assumes the law to be, not that the mere act of placing these guns in a man's own ground is illegal and punishable by indictment, but that a party doing that act may be liable to an action, provided he does not take due and proper means, by giving notice, to prevent the injury which those engines are calculated to produce. Where a man, however, is actually apprised before he enters that the guns are there, he cannot afterwards complain that there has not been a proper and sufficient notice given. The case of a man keeping on his own premises a furious dog, or bull, is to a certain degree analogous to this. Suppose such a person were to give a notice that in his premises there is a furious bull, and that it is dangerous for any person to enter, and a wrong-doer, who had read this notice, enters, and the bull attacks him, it is clear that he could maintain no action for the consequences of his own act. So, also, if a trespasser enters into the yard of another, over the entrance to which notice is given, that there is a furious dog loose, and that it is dangerous for any person to enter in without one of the servants or the owner. If the wrong-doer, having read that notice, and knowing, therefore, that he is likely to be injured, in the absence of the owner enters the yard, and is worried by the dog, (which in such a case would be a mere engine without discretion,) it is clear that the party could not maintain any action for the injury sustained by the dog, because the answer would be, as in this case, that he could not have a remedy for an injury which he had voluntarily incurred. If, indeed, the master had been upon the spot at the time, and had seen the dog running towards the man, it would have been his duty to have done all in his power to prevent the animal from worrying him, and if he had not so done, the party injured might have had a right of action. I am, therefore, of opinion, on the ground of notice only, that this action is not maintainable. — *Holroyd* J. I am of opinion that this action is not maintainable, on the ground that the plaintiff had notice that the spring-guns were placed in the wood in question. I do not consider it necessary that he should have notice of the precise spot in which the spring-guns were placed. It is sufficient, in the present case, that he had notice generally that they were placed in the ground in question. The mere act of placing spring-guns in a man's own ground is not of itself unlawful. It is not an indictable offence, nor will it subject a party to an action, unless some injurious consequences result from it. If any such consequences result, it may perhaps form the subject of an action. Without giving any decided opinion upon that point, but assuming, for the present, that that would be so, it seems to me that a party having express notice that the spring-guns were placed in a particular ground, and entering upon that place as a trespasser, stands in a very different situation; for if the placing of the spring-guns be not of itself an unlawful act, and only becomes so in respect of the consequences which result from it, the party who so enters, with full knowledge of the danger, is himself the cause of the mischief that ensues, and falls within the principle of law, *volenti non fit injuria*; for as he knows that the spring-guns were placed there, he can have no right of action for an injury which resulted from his own act alone. The only doubt which I have entertained during the

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Ilott v. Wilkes. course of the argument arises out of that maxim of law, that a man cannot do that indirectly which he cannot do directly. I am now, however, satisfied, that that principle has no application to the present case, where the plaintiff had express notice that the spring-guns were placed on the premises into which he wrongfully entered; for in that case the act of firing off the gun, which was the cause of the injury, was his act, and not the act of the person who placed the gun there. If, indeed, a party who had no notice, had gone into the grounds, although he would be a trespasser, the act of firing off the gun, by treading accidently on the wires, would not, in consequence of those wires being latent, be considered his own act; but he would be a mere instrument of producing that which resulted from a prior act done by another. If one person makes use of another, who is a mere instrument, to do any act, the thing done is the act, not of him who is merely the instrument, but of the person who uses him as such instrument. Thus, if a man induces a madman to inflict wounds upon the person of another from which death ensues, in point of law, that is not considered the act of the madman, but the act of the person inciting him. The madman is considered a mere instrument, and the other person, though not present at the time of the act done, is indictable for murder as a principal (although, generally speaking, to make a person a principal in murder he must be present at the time); the reason of which is, that the act done is considered as the act of the person who causes it, and he is considered as virtually present at the time of doing it, and the madman as a mere instrument in his hands. So it is in a case where one person secretly mixes poison with food, for the purpose of the poison being ignorantly taken in the food by another. Now, in the present case, in order to make the firing off of this gun the act of the person who placed it there, we must consider him as doing indirectly the same thing as if he had taken up the gun at the time and shot the plaintiff; and we must consider the latter as a mere instrument, and not as an actor; but, in my opinion, the plaintiff in this case was not an instrument, but an actor. If he had seen the wires and trod on them with the intention of firing off the gun, it is clear that that would have been his own act. Here, he entered the wood with full notice that those engines were placed there, and with the knowledge, therefore, that the danger was unavoidable. So far as he was concerned, the cause of the mischief could not be considered as latent; and the act of letting off the gun, which was the consequence of his treading on the wire, must be considered wholly as his act, and not the act of the person who placed the gun there. If, indeed, the defendant had been present, and had seen a trespasser enter, and had the means of preventing the injury, and had not done all in his power to prevent it, unquestionably it might have been considered as proceeding from his own act; but in the present case he was absent, and had not the means of averting the mischief; and, therefore, the maxim of law, that a man cannot do that indirectly which he cannot do directly, is not applicable to the present case. Indeed, that maxim would equally apply to a case where a person kept a ferocious bull in his grounds, where other persons were used to resort. [See *Brock* v. *Copeland*, 1 *Esp.* 204.] In such a case, if there was no notice, and a trespasser was to enter and be gored, an action would lie for the

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injury; but if public notice were given, and it could be shewn that the trespasser knew that such a dangerous animal was there, and with that knowledge was hardy enough to run the risk, it is perfectly clear that he could support no action. I am, therefore, of opinion that this action is not maintainable, on the ground that the damage sustained has been produced by the plaintiff's own wilful act.—*Best* J. The act of the plaintiff could only occasion mere nominal damage to the wood of the defendant. The injury that the plaintiff's trespass has brought upon himself is extremely severe. In such a case, one cannot, without pain, decide against the action. But we must not allow our feelings to induce us to lose sight of the principles which are essential to the rights of property. The prevention of intrusion upon property is one of these rights, and every proprietor is allowed to use the force that is *absolutely* necessary to vindicate it. If he uses more force than is *absolutely* necessary, he renders himself responsible for all the consequences of the excess. Thus, if a man comes on my land, I cannot lay hands on him to remove him, until I have desired him to go off. If he will not depart on request, I cannot proceed immediately to beat him, but must endeavour to push him off. If he is too powerful for me, I cannot use a dangerous weapon, but must first call in aid other assistance. I am speaking of out-door property, and of cases in which no felony is to be apprehended. It is evident, also, that this doctrine is only applicable to trespasses committed in the presence of the owner of the property trespassed on. When the owner and his servants are absent at the time of the trespass, it can only be repelled by the terror of spring-guns, or other instruments of the same kind. There is, in such cases, no possibility of proportioning the resisting force to the obstinacy and violence of the trespasser, as the owner of the close may and is required to do where he is present. There is no distinction between the mode of defence of one species of out-door property and another (except in cases where the taking or breaking into the property amounts to felony). If the owner of woods cannot set spring-guns in his woods, the owner of an orchard, or of a field with potatoes or turnips, or any other crop usually the object of plunder, cannot set them in such field.. How then are these kinds of property to be protected, at a distance from the residence of the owner, in the night, and in the absence of his servants? It has been said, that the law has provided remedies for any injuries to such things by action; but the offender must be detected before he can be subjected to an action, and the expense of continual watching for this purpose would often exceed the value of the property to be protected. If we look at the subject in this point of view, we may find, amongst poor tenants, who are prevented from paying their rents by the plunder of their crops, men who are more objects of our compassion than the wanton trespasser, who brings on himself the injury which he suffers. If an owner of a close cannot set spring-guns, he cannot put glass bottles or spikes on the top of a wall, or even have a savage dog, to prevent persons from entering his yard. It has been said in argument, that you may see the glass bottles or spikes; and it is admitted, that if the exact spot where these guns are set was pointed out to the trespasser, he could not maintain any action for

Ilott v. Wilkes. the injury he received from one of them. As to seeing the glass bottles or spikes, that must depend on the circumstance whether it be light or dark at the time of the trespass. But what difference does it make, whether the trespasser be told the gun is set in such a spot, or that there are guns in different parts of such a field, if he has no right to go on any part of that field? It is absurd to say, You may set the guns, provided you tell the trespasser exactly where they are set, because then the setting them could answer no purpose. My brother *Bayley* has illustrated this case, by the question which he asked, namely, Can you indict a man for putting spring-guns in his inclosed field? I think the question put by Lord C. J. *Gibbs*, in the case in the C. P., a still better illustration, *viz.* Can you justify entering into inclosed lands, to take away guns so set? If both these questions must be answered in the negative, it cannot be unlawful to set spring-guns in an inclosed field, at a distance from any road, giving such notice that they are set, as to render it in the highest degree probable, that all persons in the neighbourhood must know that they are so set. Humanity requires that the fullest notice possible should be given, and the law of *England* will not sanction what is inconsistent with humanity. It has been said in argument, that it is a principle of law, that you cannot do indirectly what you are not permitted to do directly. This principle is not applicable to the case. You cannot shoot a man that comes on your land, because you may turn him off by means less hurtful to him; and, therefore, if you saw him walking in your field, and were to invite him to proceed on his walk, knowing that he must tread on a wire, and so shoot himself with a spring-gun, you would be liable to all the consequences that would follow. The invitation to him to pursue his walk is doing indirectly, what by drawing the trigger of a gun with your own hand is done directly. But the case is just the reverse, if, instead of inviting him to walk on your land, you tell him to keep off, and warn him of what will follow if he does not. It is also said, that it is a maxim of law, that you must so use your own property as not to injure another's. This maxim I admit, but I deny its application to the case of a man who comes to trespass on my property. It applies only to cases where a man has only a transient property, such as in the air or water, that passes over his land, and which he must not corrupt by nuisance; or where a man has a qualified property, as in land near another's ancient windows, or in land over which another has a right of way. In the first case, he must do nothing on his land to stop the light of the windows, or in the second, to obstruct the way. This case has been argued, as if it appeared in it, that the guns were set to preserve game, but that is not so; they were set to prevent trespasses on the lands of the defendant. Without, however, saying in whom the property of game is vested, I say, that a man has a right to keep persons off his lands in order to preserve the game. Much money is expended in the protection of game, and it would be hard, if, in one night, when the keepers are absent, a gang of poachers might destroy what has been kept at so much cost. If you do not allow men of landed estates to preserve their game, you will not prevail on them to reside in the country. Their poor neighbours will thus lose their protection and kind offices; and the government

the support that it derives from an independent, enlightened, and unpaid magistracy. — Rule absolute.

If conies are hunted out of the warren, or deer out of the park, and the warrener or parker pursues them, he may retake them; for in parks and warrens, officers are established by authority to have an eye over the game, and to keep it within the boundaries; so that the property is not altered by driving it out of the inclosures, unless it be also out of the pursuit of the officers; for as long as he that is thus trusted doth pursue it, it is not in its natural liberty, but is still belonging to the park or warren. 3 *Bac. Abr.* 326. Game escaped out of the inclosure, may be retaken on fresh pursuit.

If a man start any game within *his own* grounds, and follow it into another's, and kill it there, the property remains in himself; and this is grounded on reason and natural justice, for the property consists in the possession, which possession commences by the finding it in his own liberty, and is continued by the immediate pursuit. 11 *Mod.* 75. 2 *Blac. Com.* 419. Property in game killed.

And so if a stranger start game in one man's chase or free warren, and hunt it into another liberty, the property continues in the owner of the chase or warren; this property arising from privilege, and not being changed by the act of a mere stranger. 2 *Ld. Raym.* 251. 2 *Blac. Com.* 419.

If a man start game on *another*'s private grounds, and kill it there, the property belongs to him in whose ground it was killed, because it was also started there, this property arising *ratione soli*. But if after being started there, it is killed in the ground of a *third* person, the property belongs not to the owner of the first ground, because the property is local; nor yet to the owner of the second, because it was not started in his soil; but it vests in the person who started and killed it, though guilty of a trespass against both the owners. 2 *Blac. Com.* 419.

A.'s dog hunted and caught on B.'s land a hare started on the grounds of C. The property is thereby vested in A., who may maintain trespass against B. for afterwards taking the hare away. *Churchward* v. *Studdy*, 14 *East*, 249.

If one were to give leave to another to hunt over his premises, it would not give him the liberty of shooting there. *Per Gibbs* C. J., *Moore* v. *Ld. Plymouth*, 7 *Taunt.* 627.

By stat. 23 *El. c.* 10. § 4. No person shall hunt with his spaniels in any ground where corn or other grain shall grow (except in his own ground) at such time as any eared corn shall be growing, nor before it be shocked, on pain of forfeiting to the owner of the grain 40*s*. 23 El. c. 10. Hunting amongst growing corn.

§ III. Qualification by Estate or Degree to kill Game; with the Punishment of Persons unqualified, killing or having Game in their Possession.

The qualification by estate for killing game in the reign of K. *Richard* the second, was 40*s*. a-year; in the reign of K. *James* the first, it was advanced to 10*l*. a-year, and after that in some instances to 40*l*. a-year; and at last, in the reign of K. *Charles* the second, it was raised to 100*l*. a-year. Not that the laws have become gradually more severe; but as the value of money decreased, the Qualification.

qualification was raised in proportion, the estate continuing nearly the same; for an estate of 40*s.* a-year in the reign of K. *Richard* the second was not much inferior to an estate of 100*l.* a-year in the reign of K. *Charles* the second. And the penalty for destroying the game was even more severe then than it is now.

As those ancient laws relating to the game are still in force, and are generally enacted so to be by the subsequent statutes, it will be necessary, in order to have a thorough knowledge of this matter, to insert them in their order, because the penalties on each being different, the prosecutor or justices may choose upon which of them they will convict an offender. Thus, by stat. 5 *An. c.* 14. hereafter following, if a person not having 100*l.* a-year shall keep or use dogs or engines to destroy the game, he shall forfeit 5*l.*; but if such person have not 40*s.* a-year, he may upon stat. 13 *R.* 2. *st.* 1. *c.* 13. be punished by a year's imprisonment; and so of the rest: Provided, that no person be prosecuted upon more than one act for one offence.

13 R. 2. st. 1. c. 13. (1389.) 40*s.* a-year.

The first qualification relating to the game was in stat. 13 *R.* 2. stat. 1. *c.* 13.; by which it is enacted, that no layman which hath not lands or tenements of 40*s.* a-year, nor clergyman if he be not advanced to 10*l.* a-year, shall have or keep any grey-hound, hound, nor other dog to hunt; nor shall use ferrets, hays, nets, hare-pipes, nor cords, nor other engines, for to take or destroy hares, nor conies, nor other gentlemen's game; on pain of a year's imprisonment. And the justices of the peace (that is, in their sessions) shall inquire of the offenders in this behalf, and punish them by the pain aforesaid.

1 J. 1. c. 27. (1604.) 10*l.* a-year.

The next qualification by estate or degree to kill game was by stat. 1 *J.* 1. *c.* 27. § 3.; whereby it is enacted "that all and every person and persons which from or after the said 1st day of *August* (1604) shall have or keep any greyhound for coursing of deer or hare, or setting-dog or dogs, or net or nets, to take pheasants, or partridges, except such person or persons which shall be seized in their own right or in the right of their wives, of lands, tenements, or hereditaments, of the clear yearly value of 10*l.* by the year or more, over and above all charges and reprises, of some estate of inheritance; or of lands, tenements, or hereditaments, in his own right or in the right of his wife, for term of life or lives of the yearly value of 30*l.* over and above all charges and reprises, or be possessed of goods or chattels to the full value of 200*l.* to his own use; or be the son or sons of any knight, or of any baron of parliament, or of some person of higher degree, or the son and heir apparent of any esquire; and being thereof convicted, as aforesaid, shall by the said justices of the peace be committed and imprisoned in manner and form as in and by this present act before is expressed, specified and declared: except such person and persons so offending and thereof convicted as aforesaid, do forthwith pay or cause to be paid to the churchwardens of the said parish where the said offence shall be committed, or the party apprehended, to the use of the poor of the said parish, the sum of 40*s.*" (*a*); [or after one month after his commitment he become bound by recognizance with

(*a*) This latter paragraph is part of the § 2. of the same act, but it seems doubtful whether it refers only to the offences described in that sect. *viz.* the shooting at, killing, and destroying the game therein described, or can be incorporated with this 3d §. inasmuch as the condition of the recognizance is to be "not to kill, &c. by any of the means in that § 2. aforesaid." K.

two sureties before two justices in 20*l*. a-piece not to offend again in like manner.]

The next qualification relates to deer and conies only, in the 3 *J*. 1. *c*. 13. § 5., by which it is enacted, that if any person not having manors, lands, tenements, or hereditaments of the clear yearly value of 40*l*. or not worth in goods 200*l*., shall use any gun or bow, or cross-bow, to kill any deer or conies; or shall keep any buckstall or engine-hayes, gate-nets, purse-nets, ferrets, nets, or coney dogs, (except he have grounds inclosed, and used for the keeping of deer or conies, the increasing of which said conies shall amount to the clear yearly value of 40*s*. or keepers or warreners in their parks, warrens, or grounds belonging to their charge,) in such case any person having lands, tenements, or hereditaments, of the clear yearly value of 100*l*. in fee simple, fee tail, or for life, in his own right or the right of his wife, may take from such person to his own use for ever such guns, bows, cross-bows, buckstalls, &c. &c. 3 J. 1. c. 13. (1605.) 40*l*. a-year.

The next qualification (which relates to *pheasants* and *partridges* only,) is by stat. 7 *J*. 1. *c*. 11. § 7. and is as follows; (§ 7.) Every free warrener, every lord of a manor, and every freeholder seized in his own or his wife's right of lands, tenements, and hereditaments of the clear yearly value of 40*l*. of some estate of inheritance, or of lands, tenements, and hereditaments, in his own or his wife's right, for term of life or lives, of the yearly value of 80*l*. clear, or worth in goods 400*l*., may by him, or his menial and household servants sufficiently thereto by him authorized, take pheasants and partridges (in the day time only) in his own or his master's free warren, manor, and freehold, betwixt *Michaelmas* and *Christmas* yearly. 7 J. 1. c. 11. 40*l*. a-year.

The last general qualification by estate or degree to kill game, and which is now most to be regarded, is in stat. 22 & 23 *C*. 2. *c*. 25. § 3. by which it is enacted, "that all and every person and persons not having lands and tenements or some other estate of inheritance in his own or his wife's right of the clear yearly value of 100*l*. *per annum*, or for term of life, or having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150*l*. (other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies, for their necessary use, in respect of the said forests, parks, chases, or warrens,) are hereby declared to be persons by the laws of this realm not allowed to have or keep for themselves or any other person or persons, any guns, bows, greyhounds, setting-dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, harepipes, gins, snares, or other engines aforesaid, but shall be and are hereby prohibited to have, keep, or use the same." 22 & 23 C. 2. c. 25. 100*l*. a-year.

In his wife's right.] *R*. v. *Earnshaw*, 15 *East*, 456. This was a conviction on stat. 5 *Ann*. *c*. 14. in which the information set out negatived amongst the other qualifications mentioned in stat. 22 & 23 *Car*. 2. *c*. 25. § 3. that *the said John Earnshaw* at the time of the offence committed had "*lands or tenements, or any other estate of inheritance* of the clear yearly value of 100*l*. or for term of life," &c. or was "in any other manner qualified, employed, licensed, or authorized by the laws of this realm either to take, kill, or destroy any sort of game whatsoever, or to keep or use any lurcher for that purpose;" but did not go on to negative that the defendant was qualified by having an estate of inheritance of 100*l*.

22 & 23 C. 2. c. 25.

a-year *in right of his wife*, which is one of the qualifications of the statute of *Car.* 2.—*Per* Lord *Ellenborough* C. J. It has been settled that all the qualifications for killing game must be specifically negatived in the conviction, and that being so, there is no more reason for dispensing with the terms in which they may be aptly and certainly negatived. Here one of the qualifications mentioned in the statute is omitted to be negatived, namely, that the defendant had an estate of inheritance of the annual value of 100*l.* in right of his wife, we must presume, therefore, that it could not have been truly negatived. It is always safer in these cases to follow the words of the act. The other judges agreed.—Conviction quashed.

In what case mortgagor in possession is qualified.

Of the clear yearly value of 100*l.* per annum.] Where the estate is mortgaged, if the interest of the sum for which it is mortgaged reduces the rent, where the estate is let; or the value, where it is in the hands of the mortgagor, under 100*l.* a-year, the owner of the estate is *not qualified* to kill game. *Wetherell* v. *Hall*, *Cald.* 230.

The words "*clear yearly value*," mean clear yearly value to the person in possession. *S. C.*

What shall be deemed sufficient proof of a qualification.

On a question arising upon an information before magistrates, as to the defendant's qualification, the magistrates may ground their opinion of his not being qualified on the fact of the defendants having sworn on a former day under the income tax act, that his *annual income* did not exceed 50*l.* and his admission on the hearing that the value had not increased since the time of making such declaration. *R.* v. *Clarke*, 8 *T. R.* 220.

Ecclesiastical living.

Or for term of life.] It was doubted upon these words, in what order of qualification an ecclesiastical living shall be ranked, which a man holds not in his own or his wife's right, but in the right of his church. It is allowed to be a life estate, although it may happen to be determined sooner, as by resignation, deprivation, or accepting another living incompatible. But the question is, whether these words shall belong to the former or the latter part of the sentence? The difficulty seems to be partly occasioned by the disjointed manner of punctuation. But the points are no part of the statute. The statutes themselves are without points; the punctuation is only made by the printer. Abstracted from the punctuation, it should seem that the former part of the sentence, respecting the qualification of 100*l.* a-year by an estate of inheritance, ought to terminate with the words *per annum*. And that a life estate, being of inferior quality, ought to be coupled with leasehold, whereof 150*l.* a-year is necessary to constitute a qualification. And so it was determined in the case of *Lowndes*, esq. v. *Lewis*, clerk, by Lord *Mansfield*, *Ashhurst* J. and *Buller* J., against the opinion of *Willes* J. that a life-estate of less than 150*l.* *per annum* is not a qualification to kill game. *Cald.* 188.

Having lease for 99 *years of* 150*l. yearly value.*] An estate of the value of 150*l.* *per annum* holden by the party in his own right under a lease of 99 years to trustees, if he and others should so long live, is a sufficient qualification; and leases of this kind have always been so deemed. *Earl Ferrers* v. *Henton*, 8 *T. R.* 506.

Sons and heirs apparent of esquires.

Other than the son and heir apparent of an esquire.] Esquire, *escuyer*, *scutarius*, called by the Saxons *schilt knaben* or *knapen*, (from whence cometh the word *knave*, which anciently signified a servant,) is a name of dignity next above the common title of gentleman and below a knight. Heretofore he was attendant and

had employment as a servant, waiting on such as had the order of knighthood, bearing their *shields*, and helping them to horse, or such like. And this title is of that nature with us now, that to whomsoever either by blood or place in the state, or other eminency, we conceive some higher attribute should be given than that sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually style him an esquire in such passages as require legally that his degree or state be mentioned. *Seld. Tit. of Hon.* 374. 362. 687.

Of other persons of "higher degree."

Or other person of higher degree.] It has been decided that these words confine the qualification, (without estate,) to the son and heir apparent *of* an esquire, or the son and heir apparent *of* a person of higher degree, but do not qualify such esquire or person of higher degree himself. *R.* v. *Utley*, 1 *T. R.* 413. *Jones* v. *Smart*, 1 *T. R.* 44.

Doctor of physic of a Scotch university.

Jones v. *Smart*, 1 *T. R.* 44. This was an action against the defendant, to recover the penalty of 5*l.* for killing game not being duly qualified.—The defendant had a diploma from the university of *St. Andrew's* in *Scotland*, which it was contended gave him a qualification, and that a doctor of physic was of higher degree than an esquire, and therefore qualified: but Lord *Mansfield* C. J. thought (in which opinion *Ashhurst* and *Buller* Js. concurred, *dissentiente Willes* J.) that even if a physician, who had taken his degree in *England*, were entitled to the privilege contended for, a *Scotch diploma* (*a*) does not constitute the person taking out the same a "*person of higher degree*," so as to qualify his son and heir apparent to kill game.

Son only qualified during father's life.

The son can only be qualified whilst his father lives, because the words are *son and heir apparent;* he ceases to be heir apparent upon his father's death, and therefore that species of qualification is then at an end. *Christian's G. L.* 130.

What constitutes an esquire.

As to what entitles any one to the rank and privileges of an esquire, Mr. Justice *Blackstone* says, "It is, indeed, a matter somewhat unsettled what constitutes the distinction, or who is a real *esquire;* for it is not an estate, however large, that confers this rank upon its owner. *Camden*, who was himself a herald, distinguishes them the most accurately; and he reckons up four sorts of them.—1st, The eldest sons of knights, and their eldest sons in perpetual succession.—2d, The eldest sons of younger sons of peers, and their eldest sons in like perpetual succession; both which species of esquires, Sir *Henry Spelman* entitles *armigeri natalitii.*—3d, esquires created by the king's letters patent or other investiture, and their eldest sons.—4th, esquires by virtue of their offices, as justices of the peace (*a*), and others, who bear any office of trust un-

(*a*) A Scotch diploma gives no authority whatever to practise as a physician in England. *Middleton* v. *Hughes, Sittings after M. T.* 1806, *at Guildhall, cor. Mansfield* C. J. *C. P. MS.*

The mere production of a diploma, sealed with a seal purporting to be the seal of an university, and proved only by a witness to the acknowledgements of the parties whose names were affixed to it, of its authenticity, is not sufficient evidence to authenticate the instrument so as to shew that a degree has been actually conferred. At least, an examined copy from the university books should be given in evidence. *Moises* v. *Dr. Thornton*, 8 *T. R.* 303.

The following question (which arose on the hearing of an information before a magistrate for *Staffordshire*, against a person for shooting without being qualified

der the crown. To these may be added, the esquires of knights of the bath each of whom constitutes three at his installation; and all *Irish* peers; for not only these, but the eldest sons of peers of *Great Britain*, though frequently titular lords are only esquires in the law, and must be so named in all legal proceedings." 1 *Blac. Com.* 406. See 1 *Chitty on the Game Laws*, 55.

All persons who are styled esquires under the king's sign manual, as sheriffs and captains in the army and navy, will be esquires, and their heirs apparent will be qualified to kill game. *Christian's G. L.* 132.

Every barrister is an esquire. 1 *Wils.* 245.

Esquire (*Armiger*) is a name that is frequently used in divers acts of parliament to denote an estate and degree; all dukes, marquisses, earls, viscounts, and barons of other nations, or which are not lords of parliament, are to be named *esquires*; if *knights*, they are to be termed *milites*. The sons of all the peers and lords of parliament are, in law, esquires, in the life of their fathers. And the eldest son of a knight is an esquire. *Wood's Inst.* 44.

Honours can only be conferred by the crown.

The son of a captain commandant of volunteer infantry not qualified.

A commission signed by the lord lieutenant of a county constituting a person captain commandant of a corps of volunteer infantry, and styling him an esquire, does not create such person an esquire so as to qualify his son and heir apparent to kill game; for the lord lieutenant cannot confer honours. *Talbot* v. *Eagle*, *C. P.* 1 *Taunt.* 510.

22 & 23 C. 2. c. 25. Gamekeepers seizing dogs, ferrets, and engines used within the precincts of manors.

By stat. 22 & 23 *C.* 2. *c.* 25. § 2. All lords of manors or other royalties not under the degree of an esquire, may by writing under their hands and seals authorise one or more gamekeepers within their respective manors or royalties, who being thereto so authorised, may take and seize all such guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, hare-pipes, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of such respective manors shall be used by any person who by this act is prohibited to keep or use the same. And moreover, any such gamekeeper or other person being thereunto authorised by warrant (I) of one justice, may in the day time search the houses, out-houses, or other places of any such person by this act prohibited to keep or use the same, as upon good ground shall be suspected to have or keep in his custody any guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, or other dogs to destroy hares or conies, hays, tramels, or other nets, lowbels, hare-pipes, snares, or other engines aforesaid, and the same may seize, detain, and keep for the use of the lord of the manor or royalty where found or taken, or otherwise to cut in pieces or destroy, as things by this act prohibited to

I. Searching for dogs or engines.

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has recently been submitted to Mr. Serjeant *Lens*, whose opinion upon any subject is justly entitled to the highest consideration: —

> Whether the eldest son of a clergyman, a master of arts, and in the commission of the peace, is qualified as such to kill game?

I am of opinion, that the eldest son of a clergyman is not as such qualified under any of the descriptions of the stat. 22 & 23 *C.* 2. *c.* 25. § 3. and that it makes no difference in this respect that the father is a master of arts in an English university and in the commission of the peace.

John Lens.

Serjeant's Inn, Nov. 16, 1819.

be kept by persons of their degree. See *Launock* v. *Brown*, Vol. III. title Process.

And by stat. 4 & 5 *W.3. c.* 23. § 3. If any unqualified person shall have, keep, or use any bows, greyhounds, setting dogs, ferrets, coney-dogs, hays, lurchers, nets, tunnels, lowbels, harepipes, snares, or any other instruments for destruction of fish, fowl, or other game, and *shall not give a good account* before a justice, to the satisfaction of such justice *how he came by the same, or* else *shall not* in some convenient time (to be set by such justice) *produce the party of whom he bought the same, or some* other credible *person to depose upon oath such sale* thereof, he shall forfeit for every offence not under 5*s.* nor above 20*s.*, half to the informer, and half to the poor, to be levied by distress, rendering the overplus, if any be; for want of distress, to be committed to the house of correction not more than one month nor less than ten days, there to be whipped and kept to hard labour. And if any person so produced or charged with the said offence shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered.

4 & 5 W.3. c.23. 20*s.* penalty for keeping or using dogs or engines.

§ 4. All lords of manors or other royalties or persons authorised by them as gamekeepers may, within their manors or royalties, oppose and resist such offender in the night time, in the same manner, and be equally indemnified for so doing, as if the fact had been committed in any ancient chase, park, or warren inclosed.

Lords and keepers may oppose offenders in the night.

§ 7. And no *certiorari* shall be allowed to remove any conviction or other proceeding concerning any thing in this act, unless the party first become bound to the prosecutor in 50*l.* with such sufficient sureties as the justice before whom such conviction shall be, shall think fit, to pay unto the prosecutors within a month after the conviction confirmed, or *procedendo* granted, full costs and charges to be ascertained on their oath: and in default thereof, the justice shall proceed to the execution of the conviction.

Certiorari.

But by a subsequent statute 5 *Ann. c.* 14. § 4. "*If any person or persons, not qualified by the laws of this realm so to do,* shall keep or use *any greyhounds, setting-dogs, hayes, lurchers,* tunnels, *or any other engine* (a) *to kill and destroy the game, and shall be thereof* (K. L. M.) *convicted upon the oath of one or two credible witnesses, by the justice or justices of the peace where such offence is committed as aforesaid, the person or persons so convicted, shall forfeit the sum of five pounds; one half to be paid to the informer, and the other half to the poor of the parish where the same was committed; the same to be levied by distress and sale of the offenders goods* (N.) *by warrant under the hand and seal of such justice or justices, before whom such person or persons shall be convicted, as aforesaid; and for want of such distress, the offender or offenders shall be sent to the house of correction* (O.) *for the space of three months for the first offence, and for every such other offence four months.*"

5 Ann. c.14. 5*l.* penalty for keeping or using dogs and engines; and the same to be seized.

K. L. M. Conviction to be within three months.

N.

O.

(*a*) The folio black letter edition of the statutes, published A. D. 1706, hath this word engine (*See* 5 *Ann. Parl.* 2. *Sess.* 2. *c.* 14.): and so hath the 1st edition of this work. The like reading is adopted in the "Statutes of the Realm," published under the inspection of the commissioners of public records, which describe this statute and section as 6 *Ann. c.* 16. § 6. *Runnington's* and *Raithby's* editions of the statutes read engines, and describe the act as 5 *Ann. c.* 14. § 4.

5 Ann. c.14.

In *R.* v. *Bellamy*, *E.* 1823. 1 *B.* & *C.* 500. it was held that a conviction on stat. 5 *Ann. c.* 14. § 4. for keeping and using a gun to kill game without being qualified must be made within three lunar months after the offence committed, *post*, p. 585.

Justices and lords of manors may take away game, dogs, nets, &c. from unqualified persons.

§ 4. (*a*) "*And it shall and may be lawful to and for any of H. M.'s justices of the peace, in their respective counties, ridings, cities, towns corporate or liberty, and the lords and ladies of his, her, their, or any of their respective manors, within the said manors, to take away any such hare, pheasant, partridge, moor, heath-game or grouse, or any other game, from any such higlar, chapman, innkeeper, victualler or carrier, or any other person or persons not qualified to kill the same, and shall be found in their custody or possession; and likewise to take away such dogs, nets, or other engines, which shall be in the power or custody of any person or persons not qualified by the laws to keep the same, to their own proper use, without being accountable to any person or persons for the same.*"

Bird v. *Dale*, 7 *Taunt.* 560. *T.* 1817. 1 *Moore, C. P.* 290. *S. C.* Upon this latter part of stat. 5 *Ann. c.* 14. § 4. it was decided, that although justices of the peace in their respective counties, and lords and ladies of manors within their manors, may take away any hare, &c. from an unqualified person, either by themselves or others, they must exercise their judgment on the question, in what case it is to be done, and when they have exercised their judgment on the case, and are satisfied that the game is in the hands of an unqualified person, they may use the hands of others to take it; but they cannot delegate to others the jurisdiction given them by this act, of judging whether the person in possession of the game is, or is not a qualified person.

Minors.

If any person.] A minor may be convicted for all offences under the game laws: he is answerable for all crimes, offences, and trespasses, when he is of sufficient age to distinguish moral right from wrong. But he may be qualified either by estate, or by being the heir apparent of an esquire, or of some person of higher rank. *Christian's G. L.* 191.

Feme covert.

So a married woman may be convicted, if she uses a gun or engines to destroy game; or if she uses a greyhound, setting dog, or lurcher, not in company with her husband. *Ib.*

She may be qualified by lands in her own right; but her husband's qualification will not qualify her, though her's will give a qualification to her husband. *Ib.*

If any person or persons not qualified by the laws of this realm so to do, shall keep or use any greyhounds, &c.]

What an using, &c.

What shall amount to an using of greyhounds, &c. to kill and destroy the game within this act, is always a question of fact to be collected from the whole circumstances accompanying each particular case. As a general proposition, however, it may be safely stated, that a qualified person (who has a certificate) is empowered to take as many of his servants (*e. g.* his groom, *R.* v. *Taylor*, 15 *East*, 460.) or other unqualified persons to attend him, as he thinks necessary, and for the purpose of assisting him in raising the game, without subjecting such servants or unqualified persons either to the penalty of the statute for sporting without a certificate (see stat. 54 *G.* 3. *c.* 141.) or of 5*l.* under the stat. 5 *Ann.* And it has been decided by the court of K. B. (*Lewis* v. *Taylor*,

(*a*) This provision is classed in the "Statutes of the Realm," as 6 *Ann. c.* 16. § 7.

16 *East*, 49.) (contrary to a decision by *Lawrence* J. at *Stafford* Lent assizes, 1804, which has appeared in former editions of this work) that an unqualified person going out with the qualified owner of greyhounds to course a hare which was killed by the dogs, is not liable to the penalty of *5l.* under stat. *5 Ann.* although he took an active part in the sport by beating the bushes in order to find a hare, and after it was killed he alighted from his horse, went over a gate, and took it up. In the case referred to, Lord *Ellenborough* C. J. said, "There is no evidence against this defendant upon the charge of using a greyhound for killing the game. This is not a solitary amusement, and there is nothing to prevent a qualified person from taking others with him to aid him in the pursuit of the game: and he is the person using the dogs: the others have no other use of them than as his servants, and contemplating with him the pleasure of the chase. If indeed an unqualified man used his own greyhound for the purpose of sporting, though in the same company with a qualified person, the case would admit of a different consideration: but there can be no ground for recovering the penalty against this defendant, who went out with the dogs of another who was qualified, and which other was using them himself: the defendant's picking up the hare after it was killed is no using of the dogs to kill the game." The other judges agreed; and *Bayley* J. noticed that the words of the statute of *Anne* are *keep or use* any greyhounds, &c.; but this defendant neither kept the dog, nor was it under his controul at the time it was used to kill the hare. Lewis v. Taylor.

But if an unqualified person goes out of his own accord for the purpose of sporting, and meeting with a qualified man, join, without invitation, in the chase, he will be as much liable to the penalty as if he had proceeded alone. *Chitty's G. L. App.* 4.

It is also clear that a person being unqualified, relying, for his defence, on being in company with a qualified man, under any circumstances, must give strict evidence, upon the trial of an action or information, of the qualification of the person under whom he claims protection; and unless this is satisfactorily made out, a verdict will be given against him. *Clarke* v. *Broughton*, 3 *Campb.* 328.

Several unqualified persons being out together, only one penalty can be imposed for one act.

In *Peshall* v. *Layton*, 2 *T. R.* 712. Ld. *Kenyon* C. J. said, that, where several unqualified persons offended by going out together and killing a hare, only one penalty can be recovered, though the prosecutor has his election which he will sue.

So in *R.* v. *Bleasdale* and another, 4 *T. R.* 809. Which was a conviction on stat. 5 *Ann. c.* 14. § 4. for using a greyhound to destroy game without being qualified; for which the defendants were convicted in *5l. each*. The *Court*, without hearing any argument, said, the conviction could not be supported, for that it was only one offence, and that the magistrate should only have convicted them in one penalty. And they said that this point had been several times decided; in *Hardyman* v. *Whitacre* (a) and in other cases. —Conviction quashed.

But if they were each using a gun, or each setting a snare, or each had a snare in his pocket, they would each be subject to a penalty; because each is guilty of a distinct, separate, substantive act. *Christian's G. L.* 161.

(a) *Bull. N. P.* 189. This case of *Hardyman* v. *Whitacre* is more fully reported in a note to *Barnard* v. *Gostling*, 2 *East*, 573.

Pallant v. Roll. A huntsman going out with hounds without his master.

Pallant v. *Roll*, 2 *Blac. Rep.* 900. Trespass, for that the defendant being a dissolute person, neglecting his employment, and following hunting and other game and by no means qualified by law so to do, broke and entered the plaintiff's closes; and with dogs, guns, and other engines for destruction of the game hunted upon the said closes, trod down the grass, &c. against the form of the statute. On not guilty pleaded, and issue thereon, a verdict was found for the plaintiff at *Bury* assizes, for 1*s*. damages, subject to the opinion of the court upon the following case. The defendant was not qualified in his own right to kill game, but was, and for three years had been, a menial servant and huntsman to *Robert Leman*, esq. a gentleman of 1500*l*. a-year estate, who had kept hounds for 20 years; and the defendant went out by his master's order with the hounds, his master not being present, and was beating over the plaintiff's grounds. The plaintiff desired the defendant to go off his land, which he refused, and at length found a hare, and hunted it over several pieces of land mentioned in the declaration, two of which were sown with wheat. The question was, Whether, if the court should be of opinion that the defendant is not a dissolute person, or the like, under the statute of 4 & 5 *W.* the plaintiff can recover against him in this action upon the statute; or whether he ought to have brought a common action of trespass for breaking his close?—*By the court.* We have no doubt but that the defendant is not a dissolute person within the meaning of the act. The only real question is, Whether, as this action is framed, the plaintiff can recover any thing? He certainly cannot have his full costs. If he cannot recover any thing but his nonsuit, he must pay costs. If he can recover as upon a common action of trespass, he saves his costs. Now certainly any man might have always brought an action of trespass for hunting upon his ground. For this injury, among others, the statute of *Gloucester* gave costs as well as damages. The statute 22 & 23 *C.* 2. *c.* 9. to prevent vexation lowered the costs, and if less than 40*s*. recovered, gave no more costs than damages. This statute of 4 & 5 *W.* 3. restored full costs again, even in case of small damages recovered against dissolute and other persons described in the said statute. But as we are of opinion, that the defendant is not within these descriptions, the offence falls back upon the statute of *C.* 2., whereby the plaintiff shall recover no more costs than damages. And the verdict was entered by consent, that the jury find the defendant not a dissolute person, but guilty of the trespass; damages 1*s*., costs 1*s*.

Not qualified by the laws of this realm.] Though it was said in *R.* v. *Matthews*, 10 *Mod.* 26. that it was sufficient to say in a conviction generally that "the defendant was not qualified by the laws of this realm" to keep or to use a dog, &c. for the destruction of game; it has been holden in later cases that it is necessary to negative in the conviction each particular qualification. *See R.* v. *Earnshaw, ante*, p. 563.

Each particular qualification must be negatived in the conviction.

R. v. *Hill*, 2 *L. Raym.* 1415. The defendant was convicted for unlawfully keeping a lurcher and a gun to kill and destroy the game, *not being qualified by the laws of this realm so to do*. And the conviction being removed into the K. B. by *certiorari*, was quashed; because it was only averred generally that he was not qualified, and did not aver that the defendant had not the particular qualifications mentioned in the statute, as to degree, estate, and the rest.

In *R.* v. *Jarvis*, 1 *Burr.* 148. The conviction set forth that the defendant did unlawfully keep and use, and had in his custody and possession, one setting dog and setting net, for the destruction of the game; and that he the said *Jarvis* was not then anywise qualified, impowered, licensed, or authorized, by or according to the laws of this realm to kill game. It was moved to quash this conviction. And by Ld. *Mansfield* C. J. It is now settled by the uniform course of authorities, that the qualifications must be all negatively set out: otherwise the justices have no jurisdiction over the persons killing game, or keeping dogs or engines for the destruction of it. *Denison* J. concurred, and said it was a clear case, and that it was fully settled and established, that in these convictions the want of the particular qualifications mentioned in the 22 & 23 *C.* 2. ought to be negatively set out. If not, the justices have no jurisdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he had not the qualifications which are specified in that act, nor any of them. *Foster* J. also concurred, and said that on negative acts of parliament the point is fully settled and established, that the particular qualifications mentioned in the purview of them, must be negatively specified in convictions made upon them.— And, by the court unanimously, the conviction was quashed.

The qualifications must be negatively set out.

Shall keep or use.] *R.* v. *Filer*, 1 *Stra.* 496. Conviction for *keeping* a lurcher to destroy game, not being qualified. Exception was taken that it was not shewn that he *used* the dog to destroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the Court, the statute is in the disjunctive, *keep* or *use;* so that the bare *keeping* a lurcher is an offence; and so it was determined in the case of *R.* v. *King*, 1 *Sess. Cas.* 88. which was a conviction for keeping a gun. And it was not doubted by the Court, whether the *keeping* was not enough to be shewn, but the only question they made was, whether a gun was such an engine as is within that statute? and in that case a difference was taken, as to keeping a *dog*, which could only be to destroy the game, and keeping a *gun*, which a man might do for the defence of his house. And the conviction was confirmed.

Keeping.

R. v. *Hartley*, *Cald.* 175. This was a conviction on 5 *Ann. c.* 14. for *keeping* and *using* a *greyhound* to kill and destroy the game. — On a rule to shew cause why this conviction should not be quashed, it was objected, 1st, that it was not sufficiently stated, that there had been an using of the greyhound (that is) how and in what manner, and for what purpose. 2d, That it was not expressly and positively averred that he had kept and used a *greyhound* at all; being only set forth, that he kept and used a dog *called* a greyhound, but that it might be called so, and yet be another kind of dog; that it might be an *Italian* greyhound, or might be kept for the protection of a house, or other purposes than to kill or destroy the game. — By Ld. *Mansfield* C. J. Convictions must certainly be precise, that the court may see whether the offence committed falls within the jurisdiction of the magistrate; and must be quashed if not so. In this act there are two offences described, a *keeping* and *using;* and the legislature mean, that there may be a keeping to destroy, &c., which is not of necessity to be proved by an using to that purpose; if it were so, it would be tautologpus, for such

Keeping and using.

Keeping and using.

evidence would be a proving of the other offence: the keeping therefore of a thing prohibited being an offence under the act, it is necessary *primâ facie* evidence of a keeping for the purpose prohibited, and it is incumbent upon the defendant to shew that it is kept for another purpose, as that in the present case it is a house dog, a favourite dog, or a particular species of greyhound. The description cannot be more precise unless some particular instance of using is shewn, which if keeping of itself constitutes an offence, cannot be necessary. As to other objection, that the averment is defective in stating only that this was a dog *called* a greyhound, I think it positive enough: it must mean the dog of that species generally known in this country. — The other judges concurred. — Rule discharged, and conviction affirmed.

Read v. *Phelps*, 15 *East*, 271. Upon a motion to set aside a nonsuit in an action upon stat. 5 *Ann. c.* 14. for keeping and using a setting dog to kill and destroy game, which nonsuit was directed, because there was no evidence that the dog had been *used* for killing game, it was said that this evidence was not necessary if from other circumstances the jury might infer that the dog was *kept* for that purpose, the words in the stat. being "*keep* OR *use*:" but the court without argument refused the rule.

In order to constitute the offence of keeping a setting-dog, within the stat. 5&6 Ann. c. 14. § 4. the dog must be kept for the purpose of killing and destroying game; and, therefore, where it appeared that, at the time when the alleged offence was charged to have been committed, the dog was tied up, and never went out into the field with its master, this was held not to be an offence within the statute.

Hayward v. *Horner*, *H.* 2 *G.* 4. 5 *B.* & *A.* 317. Declaration in debt, on the stat. 5 & 6 *Ann. c.* 14. § 4. against defendant as an unqualified person, for *keeping*, on different days in *March*, 1821, a setting-dog, to kill and destroy game. Plea, *nil debet*. At the trial, before *Burrough* J. at the last assizes for the county of *Essex*, it was proved by the plaintiff's gamekeeper, that the defendant, during the year 1821, had kept a setting-dog, which he had seen him use in 1819. There was no proof that any use had been made of the dog by the defendant during the last season; and on the contrary, his servant proved, that subsequently to the shooting season, which commenced in *September*, 1819, the dog had generally been tied up, and that he had never seen his master take it out into the field after *January*, 1820. It was contended by *Gurney*, for the defendant, on the authority of the case of *Read* v. *Phelps*, 15 *East*, 271. that the mere fact of keeping a sporting dog, was not evidence of keeping it for the purpose of destroying game; and that in order to constitute an offence within the statute, the dog must be kept for the purpose of killing or destroying game. The learned judge was of opinion, that in an action of this sort it was sufficient to prove the keeping of any of the dogs mentioned in stats. 22 & 23 *Car.* 2. *c.* 25. 4 & 5 *W.* & *M. c.* 25. and 5 *Ann. c.* 14.; the legislature having considered such dogs to be dogs for the destruction of game. He therefore directed the jury to find a verdict for the plaintiff, with liberty to the defendant to move to enter a nonsuit. A rule *nisi* for that purpose having been obtained in last term, *Marryat* now shewed cause. The statute enacts, that an unqualified person who shall keep or use any greyhounds, setting-dog, &c. to kill and destroy game, shall be liable to a penalty. The words, *to kill or destroy game,* apply only to the *using* of the dogs, and not to the mere *keeping*. Two offences are created, one for keeping, the other for using. The statute does not say that the dogs must be kept for the purpose of destroying the game: but to make a party guilty of the offence of using the dog, it must have been used to kill and destroy game.

Keeping and using.

In *Read* v. *Phelps*, 15 *East*, 271., the dog was so young that it could not have been used to kill game. In *Wingfield* v. *Stratford*, *Say*. 15. 1 *Wils*. 315. *Lee* C. J. takes this distinction; "As greyhounds, setting-dogs, &c. are expressly mentioned in this statute, it is not necessary to allege that any of these have been used for killing or destroying game, and the rather as they can scarcely be kept for any other purpose than to kill and destroy game. But as guns are not expressly mentioned, and as a gun may be kept for the defence of a man's house, and for other lawful purposes, it is necessary to allege, in order to its being comprehended within the meaning of the words 'any other engines to kill the game,' that the gun had been used for killing the game." *Gurney*, contrà, was stopped by the Court.—*Abbott* C. J. I am clearly of opinion, that in order to constitute an offence within the stat. 5 & 6 *Ann. c.* 14. § 4. *the dog must be kept or used for the purpose of killing or destroying game.* It did not appear in this case, that at the time when the offences charged were alleged to have been committed, the dog was kept for that purpose. I think, therefore, that the verdict was wrong, and that the rule for entering a nonsuit must be made absolute.—*Bayley* J. The words "to kill and destroy game," apply to both the precedent words "keep or use." It is usual in pleading to allege, that the dogs are kept to kill and destroy game; now such an allegation would be wholly unnecessary, if the words kill and destroy game did not apply to all the precedent words. Generally speaking, the very keeping of a dog of the description mentioned in the act, would be *primâ facie* evidence that it was kept for that purpose; but, supposing it to be proved, on the other hand, that the dog was tied up during the day, and let loose only at night, the jury would be fairly warranted in presuming, that it was kept for the defence of the house, and not for the purpose of destroying game. Indeed these dogs are frequently kept for the purposes of sale. Now it is perfectly clear that a person so keeping them is not liable to the penalties of this act of parliament.—*Holroyd* J. In the case cited from *Sayer*, *Lee* C. J. only says, "that it is not necessary to allege that the specified dogs were used for the purpose of killing game." That case does not apply to the present, where the offence is the keeping of dogs for that purpose. This very point arose in the case of *Briarly* v. *Athorpe*, which was tried at the *Lent* assizes, 1792, before *Buller* J. at *York* (*a*); and he was of opinion, that in order

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(*a*) *Briarly* v. *Athorpe*, *Yorkshire Lent Assizes*, 1792. Trover for a pointer-dog, seized by the defendant, lord of the manor and a justice of the peace, as being in the custody of an unqualified person. *Cockell* Sergt., for the plaintiff, insisted, that the defendant had not, either as lord of the manor or as a justice of the peace, a right to seize the dog; first, as not being a setting-dog, nor included within the stat. 5 & 6 *Ann. c.* 14.; secondly, as not being kept for the purpose of killing game, but as a house-dog, and for defence, plaintiff having used the dog to kill game before he sold his estate, which qualified him, but never since, having kept him expressly for the purpose of a house-dog.—*Buller* J. The first question is, whether a pointer is a setting-dog within the act. I am of opinion a pointer is within the act of parliament. It is a well known rule, in expounding acts of parliament, to consider all the acts in *pari materia*. Stat. 22 & 23 *Car.* 2. *c.* 25. § 2., mentions "other dogs." A setting dog, I think, means any dog who *stops* at his game. But it is essential that it must be kept or used to kill game. If not, the word greyhound would extend to an *Italian* greyhound

A pointer is within the stat. 5 & 6 Ann. c. 14.

Keeping and using.

to bring the case within the statute, it was essential that the dog should be kept for the purpose of destroying game.—*Best* J. This is a penal statute, and ought therefore to be construed strictly. The keeping or using a dog of the particular description mentioned in the statute, to kill and destroy the game, constitute two distinct offences; and I am of opinion, that *the mere keeping* of such a dog does not constitute an offence, unless it be for the purpose of killing and destroying game. The mere keeping of such a dog may indeed be *primâ facie* evidence of the purpose for which it is kept. In this case, however, it has been considered as conclusive evidence of that purpose. Here there was proof to rebut the *primâ facie* presumption; for it was in evidence, that the dog, during the time in which the offence is laid in the declaration, was generally tied up, and never followed his master. I think, therefore, that in this case there was strong evidence to go to the jury, that the dog was not kept for the purpose of killing and destroying the game, and that the jury would have been warranted in coming to that conclusion. That being so, I think that the rule for entering a nonsuit ought to be made absolute. R. A.

In an action for penalties on stat. 5 Ann. c.14. for using a gun to kill and destroy game, held sufficient to prove that the defendant was beating about for game, and pointed his gun, though he did not fire at any game. (*a*)

Hebden v. *Hentey*, *M.* 60 *G.* 3. 1 *Chitt. Rep.* 607. Action of debt on stat. 5 *Ann.* c. 14. against an unqualified person, to recover penalties for using a gun to kill and destroy game. At the trial before *Holroyd* J. at *Huntingdon Sum. Ass.* 1819, it appeared in evidence that the defendant was the gamekeeper of a manor adjoining to that in which the offence was alleged to have been committed. The defendant had gone into the latter manor, with a gun and dog, and appeared to be beating about for game. The dog had snapped at a hare, and there was a count in the declaration for destroying that hare, the defendant being charged with having used the dog for that purpose. A covey of birds was put up, and the defendant pointed his gun at them, but he did not

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kept by a lady for her amusement. So "hays." There is no difference that I know between hays and a cabbage-net; but keeping a cabbage-net or hays to put over cabbages is not unlawful. It must be kept or used to kill game, to entitle the lord to seize. If you (the jury) think the dog was used to kill game in *September* or *October*, 1790, being since the plaintiff sold his property, there must be a verdict for the defendant; if not, then the plaintiff is entitled to a verdict. Verdict for plaintiff, damages 10*l.* See *Rex* v. *Filer*, 1 *Str.* 496. *Rex* v. *Gardner*, 2 *Str.* 1098. *Rex* v. *Thompson*, 2 *T. R.* 18.

(*a*) See *Rex* v. *Davis*, 6 *T. R.* 177. But some evidence must be given of the defendant's using the gun for the unlawful purpose. *The King* v. *Gardner*, *Andr.* 255. 2 *Str.* 1098. *S.C.* 2 *Sess. Ca.* 385. *S.C.* The declaration upon this stat. must state, that the defendant was unqualified, and the omission to make that averment will not be remedied by the insertion of the word "*unlawfully.*" *Hebden q. t.* v. *Bluff*, before *Abbott* J. at *Hereford*.

An information on stat. 5 Ann. c.14. for keeping a net, must negative the qualification, or it will be insufficient after verdict, although the word "*unlawfully*" is inserted in the count.

M. T. 1816, *Nov. 6th.* Information on stat. 5 *Ann.* c. 14. for keeping a net, and a verdict was given for the plaintiff on the second count. The declaration did not negative the defendant's being qualified to kill game, but the word "*unlawfully*" was introduced. *Campbell* moved in arrest of judgment, on account of the omission to negative the qualification, and referred to the stat. 5 *Ann.* c. 14. *Bayley* J. asked if the defendant was not qualified, whether he could have kept the net lawfully. And the cases of *Spiers* v. *Parker*, 1 *T.R.* 141.; *Rex* v. *Stone*, 1 *East*, 639. 2 *Blac. Com.* 395. 1 *Saund.* 228., were referred to. Lord *Ellenborough* C.J. asked if there was any case which shewed whether the general averment, "*unlawfully*," was sufficient to negative the qualification. The Court granted a rule *nisi*, and cause being shewn at *Sergeant's Inn*, on 22*d January*, 1817, it was held, that the insertion of the word "*unlawfully*" only was not sufficient, and that the plaintiff must negative the qualification. R. A.

fire. Under these circumstances the jury found for the plaintiff. On motion for a rule *nisi* to set aside the verdict, and enter a nonsuit, it was contended, that the evidence in the cause did not satisfy the averment in the declaration, that the defendant "*had used a gun to kill and destroy game,*" because, for any thing that appeared, the circumstance of the defendant having pointed his gun was no more than if he had pointed a stick at the game. — *Abbott* C. J. As this question was left to the jury, I do not see how we can disturb the verdict, and certainly there was evidence sufficient to go to them, upon the question whether the defendant had used the gun to kill and destroy game. The generality of that allegation must be couplec with the circumstances proved, and no doubt the learned judge left the case entirely for the consideration of the jury; and as I think he was right in so doing, I am of opinion that we ought to leave the verdict where it is.—*Bayley* J. There was evidence sufficient to go to the jury, whether in fact the defendant was not beating about for game for the purpose of driving it into his own manor, and thereby leaving it within his reach. There are cases which have decided, that it is not necessary to prove that the man actually shot the game, but if he is beating about for game, so as to shew an intention on his part to shoot it if he has the opportunity, that is a sufficient using of the gun to support an action upon the stat. of *Ann.* In the case of *King* v. *King* (*a*), *Parker* C. J. held, that walking about with intent to kill game, is evidence of using the instrument for that purpose. In this case there was evidence sufficient to shew that the defendant was beating about in the field where he was seen, and using his gun for that purpose.—*Holroyd* J. and *Best* J. were of the same opinion. R. R.

Use.] In the case of *R.* v. *King*, *Sess. Cas.* 88., *Parker* C. J. said, that walking about with intent to kill game is evidence of *using* the instrument for that purpose. **What shall be deemed using.**

And in *Rex* v. *Davies*, 6 *T. R.* 177. where the evidence stated in the conviction was, that the witness was satisfied that the defendant did keep and use a gun to kill and destroy the game, from the circumstance of his hearing a gun go off, and observing that it was fired by the defendant, who was then walking about a piece of ground with that apparent intent, the court affirmed the conviction. Ld. *Kenyon* C. J. said, *It is sufficient in convictions, if there were such evidence before the magistrate as in an action would be sufficient to be left to a jury:* here we cannot say that there was no evidence of the fact for the consideration of the magistrate. **Keeping and using a gun; what is evidence of using.**

Mr. *Christian* (*G. L.* 157, 158.) says, "that in all these cases the justice of the peace himself must be satisfied of the intent, from the circumstances stated by the witnesses. He must be satisfied that the party was in pursuit of game, and not of sparrows, larks, or fieldfares." Even if he were in pursuit of woodcocks, snipes, or rabbits, and not of hares, pheasants, partridges, or grouse, the justice would have no authority to convict *under this statute.*

Any greyhound, setting dogs, hays, lurchers, tunnels, or any other engine.] *Hooker* v. *Wilks*, 2 *Str.* 1126. An action was brought **How far penal to keep a hound.**

(*a*) 1 *Sess. Cas.* 93.; and see *Rex.* v. *Gardner*, *Andr.* 255.; *S.C.* 2 *Str.* 1098. 2 *Sess. Cas.* 385.

on stat. 8 *G. c.* 19. for using a *hound* to destroy game. And after a verdict for the plaintiff, the judgment was arrested; for the stat. 5 *Ann. c.* 14. has not the word *hound*, and the words *other engine* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended.

Seizing a hound.

A gamekeeper is not empowered by stat. 22 & 23 *C.* 2. to seize a hound belonging to an unqualified person. *Grant* v. *Hulton*, 1 *B. & A.* 134.

So in the case of *Reason* v. *Lisle, Com.* 576. In an action for the penalty under this statute, judgment was arrested, because it was stated in the declaration that the defendant did keep and use a dog to kill and destroy the game, without specifying what species of dog; for it might be a mastiff or a lap-dog, and the statute only mentions greyhounds, setting dogs, and lurchers.

A conviction under stat. 5 *Ann.* c. 14., stating in information, that the defendant "*killed a hare*," is bad.

R. v. *Morgan, E.* 1788. 2 *Chitt. Rep.* temp. *Ld. Mansfield*, 563. The defendant was convicted on stat. 5 *Ann. c.* 14., under a conviction which stated the information to have been, that the defendant "*did kill a hare and destroy the game*;" and the evidence to have been, that the defendant "*did, with certain dogs, called hounds and greyhounds, kill and destroy one hare.*" — *Plumer* moved to quash the conviction, on the ground that the offence, as stated in the conviction, was no offence against the 5 *Ann. c.* 14. The evidence of itself certainly brought the offence within the meaning of the statute; but the evidence cannot extend the offence further than that stated in the information. The fact charged in the information is, that the "*defendant killed a hare and destroyed the game.*" Now the words of 5 *Ann. c.* 14. are prohibitory against *keeping or using a gun*, &c. to kill, and not against *killing*. The defendant, for all that appears in the information, might have accidentally killed the hare. Killing in the night, or in the snow, is an offence against the statute; but then the offence must be so charged. The conviction was admitted to be bad by the other side, and the court ordered the same to be quashed. — Conviction quashed.

It is necessary to prove the actual using of the gun for the purpose of destroying game.

Any other engine.] *R.* v. *Gardiner, Andr.* 255. 2 *Sess. Cas.* 204. 2 *Str.* 1098. 14 *Vin. Abr.* 3. It was moved to quash a conviction, for unlawfully having and keeping a *gun*, being an engine or instrument for destroying the game. And it was urged, that this is no sufficient charge within this act, or any other of the laws relating to the game; for it is not said that the defendant *used* the gun for the destruction of game; and a gun is not an instrument so far appropriated to killing game, as that it is criminal for a person to have one in his custody only: and it would have been altogether as well, if it had been said that the defendant had in his custody a *cane* for the destruction of the game, which may possibly be used for that purpose. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be used in, the destroying of game. A gun is an engine, not for the killing of game, but for the defence of a man's house. And the *whole court* were clearly of opinion, that this conviction was not good. For (as they argued) if the statute is to be construed so largely as to extend to the bare having of any instrument that may possibly be used in destroying game, it will be attended with very great inconvenience, there being scarcely any, though ever so useful, but what may be applied to that purpose. And though a gun may

be used in destroying game, and when it is so, doth then fall within the words of the act; yet as it is an instrument proper and frequently necessary to be kept and used for other purposes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the destruction of game, that is prohibited by the act: but *otherwise it is of lurchers, harepipes, and such like, which are peculiarly fitted or disposed for killing game. The bare keeping of these for the purpose of killing game is sufficient to convict an offender; and it will be incumbent upon the defendant himself to prove that he kept them for other purposes.* And the conviction, therefore, was quashed. After which, *Strange* Solicitor-general said, that in the case of *R.* v. *King, E.* 3 *G.*, Lord *Macclesfield* said, that he was in the House of Commons when this act was made, and he himself objected to the inserting of the word *gun* therein, because it might be attended with great inconvenience. 5 Ann. c. 14.

And shall be thereof convicted] *R.* v. *Johnson*, 1 *Stra.* 261. (*ante tit.* Conviction, Vol. I. Conviction for keeping a gun, not being qualified. Exception was taken, that there was not a reasonable *summons;* it was answered, that the defendant appeared at the time and made defence, so that cures all defects in the summons. And by the court, the answer is right.

It has been made a question whether the service of the summons must be *personal.* It seems in general necessary that it should be so, unless where personal service is expressly dispensed with by statute. Lord C. J. *Parker* was of opinion (10 *Mod.* 345.), and the provisions specially introduced into many acts of parliament to make a service at the dwelling-house sufficient, seem to justify the inference, that the law in other cases is understood to require a service upon the person. *Paley*, 18. *Nares*, 12. (*n.*) *Bosc.* 134. Service of the summons.

If a conviction before a justice on the game laws state that the defendant was present at the time when the information was read and the witnesses examined, and that when called on for his defence he produced no evidence, and did not require any further time; that is sufficient, without stating that he was previously summoned to answer, &c. *R.* v. *Stone*, 1 *East*, 639.

Mr. *Christian*, in his Treatise on the Game Laws, p. 193, says, "As a magistrate, I should be very unwilling to proceed to a conviction, where I had not the fullest proof that the party had notice of the charge made against him; and I should certainly never do it, unless I had reason to think that he had absconded, or concealed himself, to avoid being subject to the consequences of the charge or information." Observations by Mr. Christian.

R. v. *Thomas Spencer Crowther*, 1 *T. R.* 125. This was a conviction before a justice on 5 *Ann. c.* 14. for using a gun. After stating the information, which negatived specifically every one of the qualifications in 22 & 23 *C.* 2. *c.* 25., and which disclosed the fact of the defendant's having used a gun and pointers, and killed a partridge, it stated a summons and the appearance of the defendant; who "having heard the same, and the aforesaid deposition of the said *E. Tye* having been read over again to the said *E. Tye*, in the presence and hearing of the said *T. S. Crowther*, and the said *E. Tye having again affirmed his said deposition to be true, in the presence and hearing of the said T. S. Crowther*, he the The evidence need not negative every particular qualification.

5 Ann. c.14.

said *T. S. Crowther* is asked by me, the said justice, if he can say any thing for himself, why he, the said *T. S. Crowther*, should not be convicted of the premises above charged upon him in the form aforesaid: Whereupon, &c."—It was moved to quash this conviction on two grounds; 1st, That the evidence on which it was founded was not given in the presence of the defendant, for on his appearing before the justice the witness only *affirmed* his former deposition to be true; and *R.* v. *Vipont*, 2 *Burr.* 1163. was cited. 2dly, The qualifications required by 22 & 23 *C.*2. *c.* 25. were not negatived by the evidence. The evidence was only general, that what he did was *against the form of the statute*, &c.; and *R.* v. *Jarvis*, 1 *Burr.* 154., and *R.* v. *Wheatman*, *Dougl.* 345. were cited. —In answer it was said, that the deposition of the witness having been read over in the defendant's presence, and affirmed by him to be true, was the same as if he had been re-sworn.—That as to the other objection, the information had negatived every separate qualification, and was so stated in the conviction, and there was no occasion to prove it by evidence. If the information be specific, a general deposition that he is not qualified is sufficient to put the defendant upon proving that he was.—By the Court. The first objection is good: the witness ought to have been re-sworn in the defendant's presence. As to the other point, there is no case in which it has been directly decided, that the *evidence* should negative every particular qualification. It cannot be so from the nature of the case.—Conviction quashed.

In *R.* v. *Stone*, 1 *East*, 639., Lord *Kenyon* and *Grose* J. were of opinion that the evidence ought to negative each of the qualifications; but the other two judges, *Lawrence* and *Le Blanc* Js., thought it was not necessary to produce further evidence in an information before a magistrate than in an action; and there the witnesses are never required to prove more than the fact of using the dogs and engines; and the *onus probandi* of proving the qualification, as his defence, is always thrown upon the defendant.—The court being equally divided, no order was made.

But in the following case, *R.* v. *Turner*, the court of K. B. determined that the same rule of evidence applies as well to proceedings on informations before magistrates, as to actions for penalties; and therefore a conviction, which specifically negatives the several qualifications mentioned in the statute, is sufficient, without stating evidence to negative these qualifications.

Upon a conviction under stat. 5 Ann c.14. § 2. against a carrier for having game in his possession, it is sufficient if in the information and adjudication, the qualifications mentioned in stat. 22 & 23 C. 2. c. 25. § 3. be negatived, with-

R. v. *Turner*, *T.* 56 *G.*3. 5 *M.* & *S.* 206. Conviction by two justices upon stat. 5 *Ann.* *c.* 14. § 2., against a carrier for having game in his possession. The conviction was to this effect: "*W. Taylor*, of the parish, &c. cometh before me, *J. M.*, one of the justices of our lord the king, in and for the county of *Surry*, &c.; and then and there giveth me, the said justice, to understand and be informed, that within three months now last past, that is to say, on the 5th day of *February*, now instant, at the parish of *Send* and *Ripley*, in the said county, *John Turner*, of the parish of the *Holy Trinity* in *Guildford*, in the county of *Surry*, carrier, being a person not then having lands, &c. (negativing the qualifications of the 22 and 23 *Car.* 2. *c.* 25.) nor then being a person in any manner qualified or authorised by the laws of this realm to kill game, and being then and there a carrier, did then and there

unlawfully *have in his custody and possession* sixteen pheasants and five hares, the same not being sent up or placed in the hands of the said *J. Turner*, by any person or persons qualified to kill game, contrary to the form of the statute, &c. whereby he hath forfeited the sum of 105*l.*, that is, 5*l.* for each pheasant and hare." And the conviction prays, that the defendant may be summoned to answer the premises, and that the informer may have a moiety of the forfeiture. "Whereupon the defendant being summoned on the 10th of *February*, in the 56th year aforesaid, &c. appeareth before us, the said *J. M.* and *G. M.*, one other of the justices, &c. and having heard, &c. pleads not guilty. Nevertheless, on the said 10th day of *February*, at &c., two credible witnesses, to wit, *J. T.* and *W. S.* upon their oath affirm in the presence of the said *J. Turner*, that within three months next before the said information, to wit, on the said 5th day of *February*, in the 56th year aforesaid, at &c., the said *J. Turner* being a carrier, did have in his custody and possession, in his waggon, at the parish of *Send* and *Ripley*, in the county aforesaid, sixteen pheasants and five hares, the same not being sent up or placed in the hands of the said *J. Turner*, by any person or persons qualified to kill game, contrary to the form of the statute, &c. Whereupon the said *J. Turner*, being asked what he hath to say or offer in his defence, produceth one witness, to wit, *G. T.*, who, being duly sworn, deposeth, in the presence of the said *J. Turner*, and also of the said *W. Taylor*, that on the said 5th day of *February*, at the parish of the *Holy Trinity*, in *Guildford* aforesaid, he was present at, and did aid and assist in the packing and loading the said waggon of the said *J. Turner*, and that at the day and parish last aforesaid, when the said waggon of the said *J. Turner*, left the warehouse of the said *J. Turner*, in the said parish last aforesaid, there was not in the custody and possession of the said *J. Turner*, in his said waggon, in the parish last aforesaid, any such quantity of game as is above laid to his charge, or any game whatever; and forasmuch as upon hearing the matters, &c. it appears to us, the said justices, that the said *J. Turner* is guilty of the premises; it is therefore adjudged by us the said justices, upon the testimony of the said *J. T.* and *W. S.*, that the said *J. Turner*, on the said 5th day of *February*, at the parish of *Send* and *Ripley* aforesaid, within three months next before the said information was made before me the said *J. M.* by the said *W. T.* as aforesaid, unlawfully had in his custody and possession, sixteen pheasants and five hares, contrary to the form of the statute, &c., and that the same were not sent up or placed in the hands of the said *J. Turner*, by any person or persons qualified to kill game, and that the said *J. Turner* had not then any lands or tenements, or any other estate of inheritance in his own right, or in his wife's right, of the clear yearly value of 100*l.* per annum, &c. (negativing the other qualifications); and thereupon we the said justices do convict the said *J. Turner* of the offence aforesaid, and do adjudge that the said *J. Turner*, for his said offence, hath forfeited the sum of 105*l.*, that is to say, the sum of 5*l.* for each and every of the said pheasants and hares; and we do adjudge, that one half of the said sum be paid to the poor of the parish of *Send* and *Ripley* aforesaid, where the said offence was committed, according to the form of the statute, &c. And

5 Ann. c. 14.

out negativing them in the evidence.

5 Ann. c.14. now it was argued by *Scarlett* and *Ross*, that the conviction was ill; first, because the justices have neglected to set forth the evidence in support of the information, and have only stated the conclusion which they drew from it. For the justices have repeated the charge alleged in the information, as if it were the evidence given in support of that charge; but it is impossible to conceive that the witnesses should have deposed in the very same form and words as laid in the information. It was incumbent, therefore, on the justices to set forth the particulars of the evidence and not the result of it, in order that the Court may see that there is sufficient to warrant the conviction. Secondly, it was objected, that it does not appear that any evidence was given in support of the information, negativing the qualifications mentioned in the statute, which is necessary in order to found the jurisdiction of the justices; for if the party be qualified in any one respect, the justices have no jurisdiction. And herein a proceeding before a justice differs from an action. It seems, therefore that *primâ facie* evidence, at least, ought to be required, though it must be admitted, that in *R.* v. *Stone* (1 *East*, 639.), the Court were divided in opinion upon this point. — Lord *Ellenborough* C. J. The question is, upon whom the *onus probandi* lies; whether it lies upon the person who affirms a qualification, to prove the affirmative, or upon the informer, who denies any qualification to prove the negative. There are, I think, about ten different heads of qualification enumerated in the statute (22 & 23 *Car.* 2. *c.* 25. § 3.) to which the proof may be applied; and, according to the argument of to-day, every person who lays an information of this sort is bound to give satisfactory evidence before the magistrate to negative the defendant's qualification upon each of those several heads. The argument really comes to this, that there would be a moral impossibility of ever convicting upon such an information. If the informer should establish the negative of any part of these different qualifications, that would be insufficient, because it would be said, *non liquet*, but that the defendant may be qualified under the other. And does not, then, common sense shew, that the burden of proof ought to be cast on the person, who, by establishing any one of the qualifications, will be well defended? Is not the statute of *Anne* in effect a prohibition on every person to kill game, unless he brings himself within some one of the qualifications allowed by law; the proof of which is easy on the one side, but almost impossible on the other? I remember the decision of *R.* v. *Stone*; and the arguments of the learned judges, who held the necessity of giving negative proof, were undoubtedly urged with great force; but I felt at the time, that if they were right, it would in most cases be impossible to convict at all. But in *Spieres* v. *Parker*, (1 *T. R.* 144), I find Lord *Mansfield* laying down the rule, that in actions upon the game laws, and I see no good reason why the rule should not be applied to informations as well as actions, the plaintiff must negative the exceptions in the enacting clause, though he throw the burden of proof on the other side. The same was said by *Heath J.* in *Jelfs* v. *Ballard* (1 *Bos. & Pull.* 468.) and such I believe has been the prevailing opinion of the profession and the practice. I am, therefore, of opinion, that this conviction, which specifies negatively in the information the several

qualifications mentioned in the statute, is sufficient, without going on to negative, by the evidence, those qualifications.—*Bayley* J. I have always understood it to be a general rule, that if a negative averment be made by one party, which is peculiarly within the knowledge of the other, the party within whose knowledge it lies, and who asserts the affirmative is to prove it, and not he who avers the negative. And if we consider the reason of the thing in this particular case, we cannot but see that it is next to impossible that the witness for the prosecution should be prepared to give any evidence of the defendant's want of qualification. If, indeed, it is to be presumed, that he must be acquainted with the defendant, and with his situation or habits in life, then he might give general evidence what those were; but if, as it is more probable, he is unacquainted with any of these matters, how is he to form any judgment whether he is qualified or not, from his appearance only? Therefore, if the law were to require that the witness should depose negatively to these things, it seems to me that it might lead to the encouragement of much hardihood of swearing. The witness would have to depose to a multitude of facts; he must swear that the defendant has not an estate in his own or his wife's right, of a certain value; that he is not the son and heir apparent of an esquire, &c.; but how is it at all probable, that a witness should be likely to depose with truth to such minutiæ? On the other hand, there is no hardship in casting the burden of the affirmative proof on the defendant, because he must be presumed to know his own qualification, and to be able to prove it. If the defendant plead to the information, that he is a qualified person, and require time to substantiate his plea in evidence, it is a matter of course for the justices to postpone the hearing, in order to afford him time, and an opportunity of proving his qualifications. But if the *onus* of proving the negative is to lie on the other party, it seems to me, that it will be the cause of many offenders escaping conviction. I cannot help thinking, therefore, that the *onus* must lie on the defendant, and that when the prosecutor has proved every thing, which, but for the defendant's being qualified, would subject the defendant to the penalty, he has done enough; and the proof of qualification is to come in as matter of defence. As to the objection that this evidence is consistent with the supposition, that the game was in the waggon of the defendant, without his knowledge, I think the fact of its being in his waggon, raises a presumption the other way, that it was there with his knowledge. If the defendant could have shewn, by evidence satisfactory to the justices, that he did not know it, that would have presented a very different case; but where the witness has proved that the defendant had it in his custody and possession in his waggon, surely such evidence, being unanswered, warrants this conviction.—*Holroyd* J. (*Abbott* J. was absent) It is a general rule, that the affirmative is to be proved, and not the negative, of any fact which is stated, unless under peculiar circumstances, where the general rule does not apply. Therefore it must be shewn, that this is a case which ought to form an exception to the general rule. Now all the qualifications mentioned in the statute are peculiarly within the knowledge of the party qualified. If he be entitled to any such estate, as the statute requires, he may prove it by his title deeds, or by receipt of the 5 Ann. c.14.

5 Ann. c. 14.

rents and profits: or if he is son and heir apparent, or servant to any lord or lady of a manor appointed to kill game, it will be a defence. All these qualifications are peculiarly within the knowledge of the party himself, whereas the prosecutor has, probably, no means whatever of proving a disqualification. If this be so, instead of saying that the general rule of law ought not to apply to this case, it seems to be the very case to which the rule ought peculiarly to apply. The other objections do not appear to me to be well founded; and, therefore, I think this conviction ought to be affirmed.—Conviction affirmed.

Smyth v. Jefferies.

What is sufficient possession of lands to establish a qualification.

Smyth v. *Jefferies, E.* 2 *G.* 4. 9 *Price* 257. Action of debt for recovery of penalties for killing game, the defendant not being qualified, &c. — The defendant paid into court 5*l.* for one penalty, and pleaded the general issue.— The cause was tried at *Gloucester*, before Mr. Justice *Park*, when the jury found a verdict for the defendant. *Taunton* now moved for a rule to shew cause why that verdict should not be set aside, and a new trial ordered, on the ground that the verdict was not supported by the evidence.— He stated, that the only question in the cause upon the trial was, whether the defendant was duly qualified; and the only evidence which he gave of the affirmative was, by producing certain deeds of lease and release, of the 27th and 28th of *March*, 1784; under which, the possession of the defendant's father, who was the purchaser, was proved in a vague and loose manner; but no attempt was made to prove possession by the son, nor were any particulars as to the payment of rent given in evidence, or to whom paid. It was therefore contended, that there was not sufficient proof of the defendant's having a competent estate to qualify him, having to a certain extent admitted that he had not, by the payment of one penalty into court. The learned judge, however, ruled that there was sufficient evidence for the jury; and observed that it was a very unusual thing to proceed in such cases for more than one penalty. The jury returned their verdict for the defendant. It was therefore submitted, that there ought to be a new trial.— *Richards* C. B. I think the evidence was properly left to the jury; and I cannot say, that they have not done right. There does not appear to have been any evidence given, on the part of the plaintiff, to shew that the defendant, or his ancestor, had parted with the estate, or any thing to rebut the defendant's *primâ facie* case.— *Graham* B. concurred.— *Wood* B. This was an ungracious proceeding; and, in the greater number of these cases, very slight evidence of qualification is generally considered sufficient. *Garrow* B. concurred.—R. R. [But see *R.* v. *Turner*, *ante*, 578.]

In a conviction on 5 Ann. c. 14. evidence that the defendant *kept and used a gun to kill and destroy the game*, held sufficient.

L.

R. v. *Thompson*, 2 *T. R.* 18. This was a conviction on 5 *Ann. c.* 14. § 4. stating, according to the precedent (L) the information on 8th *Dec.* 1786.; the appearance of the defendant on the 9th after being summoned, and the plea of *not guilty*, and then proceeded as follows; " Nevertheless, on the said 9th day of *Dec.* in the year aforesaid, at, &c. one credible witness, to wit, *R. Taylor* of, &c. cometh before me the said justice, and before me the same justice upon his oath, &c. saith that the defendant, on the 7th day of *Dec.* aforesaid, in the year aforesaid, at, &c. (negativing the qualifications of 22 & 23 *C.* 2. *c.* 25. § 3.) *did keep and use a gun to kill and destroy the game;* and thereupon the said defendant, &c.,

before me the same justice by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted, and for his offence aforesaid hath forfeited 5*l.* to be distributed, &c."—It was objected, that it did not appear upon the conviction of what the defendant had been convicted: it only said, thereupon the defendant on, &c., before me the same justice, by the oath of one credible witness, according to the form of the statute, is convicted, and for his offence hath forfeited, &c., though this was only a conclusion of law, and not an adjudication of the justice. There was nothing to connect it with that which preceded it; such as that "he is convicted of the premises," or "in manner and form aforesaid."—But the *Court* were clearly of opinion that there was no ground for that objection; but desired it might be argued again on another objection, which they suggested to the counsel, whether the evidence was sufficiently set forth, so that the court could see by what act the defendant had incurred the penalty; for they observed, that the act of *keeping a gun* was in itself ambiguous, and it must be shewn to be *kept for the purpose of killing game*, in order to bring the party keeping it within the act; it was not like keeping a greyhound or a snare, which could not be kept for any other purpose, and which was expressly prohibited by the act. After argument—*Per Ashhurst* J. If this were a new case, I should most undoubtedly be of opinion that this conviction could not be supported, because I think the evidence should be set forth particularly, that we may judge whether the justice has convicted upon proper evidence. The fact of keeping or using the gun for the purpose of destroying game should appear; but it is only stated here that the defendant kept and used, &c., which is the result of his evidence. Then whether he kept it for the purpose of killing *game* is likewise a question of law; for an ignorant witness in the country might fancy that a woodcock or rabbit was game. So that it seems to me that permitting this general evidence to be stated, is allowing the witness to give his sentiments on the law as well as on the facts. But as the precedents are usually in this form, and as the conviction in *R.* v. *Hartley* (*ante*, p. 571.) was similar to the present, it is better to support this conviction than, by quashing it, to overturn all former precedents.—*Buller* J. If this precedent had never been adopted, I should have been of opinion that the evidence should have been fully set forth; but after so many convictions have been made in the same form, it would be dangerous to quash the present. The distinction taken in *R.* v. *Filer* is good law; it is not an offence to *keep* or *use* a gun, unless it be *kept* or *used for the purpose of killing game*. But it is here stated by the evidence, "that the defendant did keep and use a gun to kill and destroy the game." As to the other question respecting *game*, I cannot agree that the witness, in swearing that the defendant used a gun to destroy game would be swearing to a question of law; because it is settled by act of parliament, and every man is bound to know what is game. If he swear that to be game which is not so in law, he would be guilty of perjury. Game must be understood in its legal sense.—*Grose* J. I cannot give my consent to support this conviction. The justice should return particularly all the facts and the conclusion in the conviction; first, the information, the summons, the

5 Ann. c. 14.

5 Ann. c.14. appearance, or the defendant's default in not appearing; that the information was read to the defendant; that he was asked what he had to plead, the whole of the evidence particularly, and the adjudication. The witness should swear to the *facts*, and not to the *law*.

But the next day, when this case was again mentioned, *Grose* J. said, As the precedent in *Burn*, though it seems to me a faulty one, has been recognized by this court in *R*. v. *Hartley*, of which

Cald. 75. I was not aware before yesterday, I think it must be supported. It might be highly inconvenient to overturn it; and I should be sorry that any opinion of mine should shake the authority of an established precedent; since it is better for the subject that even faulty precedents should not be shaken than that the law should be uncertain.

There was another doubt entertained by the court, namely, whether it sufficiently appeared that the evidence was given in the defendant's presence? but it was overruled. — Conviction affirmed. See *R*. v. *Pearce*, 9 *East*, 358. *S. P.*

In *R*. v. *Swallow*, 8 *T. R*. 284. it was ruled, that if it be stated on the conviction that the defendant appeared and pleaded, and that the evidence was given on the same day, the court will intend that the evidence was given in the defendant's presence, though the appearance was at *A*. and the evidence given at *B*.

The conviction may be on the confession of the defendant.

Upon the oath of one or two credible witnesses.] Though the statute directs the conviction to be "*upon the oath of one or two credible witnesses*," without adding, *or by the confession of the offender*; yet a conviction upon his confession before the justice has been held sufficient. *R*. v. *Gage*, 1 *Stra*. 516. 1 *T. R*. 320.—1 *Saund*. 262. (*n*. 1.) And what is still stronger, it has been held that a confession made to others, and not to the justice, if proved by such persons to his satisfaction, in the presence of the defendant, will be sufficient evidence to convict. *Ibid.* Where the defendant confesses the charge, it seems to be sufficient only to state in the conviction the information, the defendant's appearance, the confession, and adjudication. But a confession will extend no farther than to the facts charged in the information; therefore, if the offence be not brought by the information within the act of parliament, upon which the conviction is founded, the defendant's confession will not make the conviction good. *R*. v. *Little*, 1 *Burr*. 605.

The informer cannot be a witness.

Credible witness.] *R*. v. *Stone*, 2 *Ld. Raym*. 1545. A conviction was quashed because the informer was the witness, divers convictions having been quashed for the same reason before. The same adjudged in the case of *R*. v. *Blaney*, *T*. 11 *G*. 2 *Andr*. 240.

2 G.3. c.19. And in stat. 2 *G*.3. *c*. 19. it is recited that in prosecutions on the act of 8 *G*. 3. *c*. 19. in the courts of *Westminster*, where a part of the penalty is given to the poor of the parish, the inhabitants of such parish had been disallowed to give evidence; and therefore in that case, to remedy the same, the act gives the whole penalty to the prosecutor, in order to enable the inhabitants to give evidence.

An indictment for killing a hare cannot be maintained.

By the justice.] In *R*. v. *Buck*, 2 *Stra*. 679. the court of K. B. held, that an indictment cannot be supported for killing a hare without a qualification, the 5 *Ann*. *c*. 14. having appointed a summary proceeding before justices of the peace; nor is it an indictable offence to have nets or guns in possession to kill game. *R*. v. *Towning and others*, *Andr*. 303.—2 *Chitt*. *G*. *L*. 1077.

And although for some purposes several persons, by associating in the commission of an illegal act, may become indictable for a conspiracy; yet several persons cannot be indicted at common law for conspiring to kill game; and therefore in *R.* v. *Turner and others*, 13 *East*, 228., where the defendants resolved to go into a preserve, or place set apart for the protection of hares, with arms by night, and take and carry away hares, which they accordingly do, they cannot be indicted for it as for a conspiracy. Ld. *Ellenborough* C. J. said he should be sorry to have it doubted, whether persons agreeing to go and sport upon another's ground, in other words, to commit a civil trespass, should be thereby in peril of an indictment for an offence which would subject them to infamous punishment. 5 Ann. c.14.

A magistrate ought to take very correct minutes of what passes upon every conviction before him, and he ought carefully to preserve them. *Christian's G. L.* 199.

If a statute authorises a conviction, "provided such conviction be made within ——— months after the offence committed," (as stats. 22 & 23 *C.* 2. *c.* 25., 5 *Ann. c.* 14.) it is not enough that the *information* was within that period, but the *conviction* itself is void if not made within the limited time. And it makes no difference that it was prevented from being so by an adjournment at the request of the defendant himself; for after the time has expired for making the conviction, there is no authority existing for that purpose. *R.* v. *Tolley*, 3 *East*, 467. *Paley*, 12.

A conviction on the 5 Anne, c.14. s.4., for keeping and using a gun to kill game without being qualified must be made *within three months after the offence committed.*

Convicted, "as aforesaid."] *R.* v. *Bellamy*, *E.* 4 *G.* 4. 1 *B.* & *C.* 500. A conviction stated, that the defendant within three months now last past, to wit, on 1st *September*, 1821, not having then lands or tenements, or any other estate of inheritance of the clear yearly value of 100*l.*, or for term of life, &c. negativing the qualifications; nor then being game-keeper of any lord or lady of any lordship or manor; nor then being truly and properly a servant of any lord of any lordship or manor; nor then being immediately employed and appointed to take and kill the game for the sole and immediate benefit of such lord; nor being in any other manner qualified, empowered, licensed, or authorised by the laws of this realm, either to take, kill, or destroy any sort of game whatsoever, did, at, &c. keep and use a gun, being an engine to kill and destroy the game against the form of the statute in that case made and provided, whereby he forfeited, &c. The conviction then set forth a summons of the defendant, his appearance on the 6th *December;* and that a witness examined on the part of the informer, proved the offence to have been committed on the *first* day of *September*, and the conviction was dated the 6th day of *December*, which was more than three months after the offence was committed. The conviction was removed into this court by certiorari, in order that it might be quashed. And now, *Adams* argued in support of the conviction. A conviction for selling game under the 5 *Ann. c.* 14. § 2., must be made within three months after the offence is committed; but this conviction is founded upon the 4th section of that act, in which no time is limited, within which the conviction is to take place. The words "convicted as aforesaid" in that section refer, not to the conviction in the 2d section, but to the preceding words in the 4th

5 Ann. c. 14.

R. v. Bellamy.

section, viz. the justices before whom the conviction is to take place, and the witnesses by whose testimony the offence is to be proved. The case of *R.* v. *Tolley*, 3 *East*, 467. was a conviction on the 9 *Ann. c.* 25 § 1., by which the conviction is expressly required to be within the time limited by the second section of the 5 *Ann. c.* 14. It is not, therefore, an authority in point. — *Denman* contrà. After insisting that the case of *R.* v. *Tolley* was an authority to shew that the conviction must be made within three months after the offence is committed, was stopped by the Court. — *Abbott* C. J. I am of opinion that a conviction under the 5 *Ann. c.* 14. § 4., must take place within three lunar months after the offence is committed. In this case it did not take place within that time, and therefore must be quashed. The language of the acts of parliament upon the subject of game is by no means free from obscurity. It is our duty, however, to give effect to the intention of the legislature, if that can be ascertained: now I think that the intention is made manifest in this instance, by the different parts of the act in question, and also the subsequent stat. of 9 *Ann. c.* 25. The 5 *Ann. c.* 14. § 2. enacts, " that if any higler, &c. shall have in his possession any hare, pheasant, &c. or shall buy, sell, or offer to sell any hare, &c.; every such higler, &c. shall, upon every such offence, be carried before a justice of the peace; and upon view, or upon the oath of one or more credible witnesses, shall be convicted of the same, and shall forfeit for every hare, pheasant, &c. *5l.*, provided that such conviction be made within three months after such offence committed." The conviction for offences described by that section must, therefore, take place within three months after the offence is committed. The third section only provides for discoveries. Then the fourth section enacts, " that if any person not qualified so to do, shall keep or use any greyhounds, &c., or other engines, to kill game, and shall be convicted thereof, upon the oath of one or two credible witnesses by the justices of the peace where such offence is committed, *as aforesaid;* the person so convicted shall forfeit the sum of *5l.*, one half to be paid to the informer, and the other half to the poor of the parish where the same was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of such justice before whom such person shall be *convicted as aforesaid.*" The words " as aforesaid," are twice used in the fourth section, and in both instances refer to " convicted." Now the only mode of conviction before pointed out in the statute, is that mentioned in the second section, and, therefore, by a general reference to that, the fourth section refers as well as to the time within which the conviction must take place, as to the other circumstances of it. Indeed no part of the description of the conviction is wanted in the fourth section, but that of the time within which it is to take place, for it expressly describes the justice before whom, and the witnesses upon whose testimony it is to take place. The fourth section then goes on to enact, " that it may be lawful for any lord of a manor to empower his game-keeper to kill game; but if the said game-keeper shall, under colour or pretence of the said power and authority to kill, or take the same for the use of such lord, sell and dispose thereof to any person whatsoever, and shall be thereof

convicted before any one justice of the peace *as aforesaid*, upon such conviction, such game-keeper shall be committed to the house of correction for the space of three months." Then comes the 9 *Ann. c.* 25. which enacts, "that lords of manors shall appoint but one game-keeper, whose name is to be entered with the clerk of the peace; and in case any other game-keeper whose name shall not be entered as aforesaid, who shall not be otherwise qualified by the laws to kill game, shall presume to kill any hare, &c. or sell or expose to sale any hare, &c.; the offender shall for every such offence incur such forfeiture, pains, and penalties as are inflicted by the recited act upon higlers, &c. for buying and selling game, to be recovered by such means, and in such manner and form, *and within such time*, and to such uses as are prescribed by the said act. It is reasonable to suppose, that when the legislature in the 9 *Anne, c.* 25. imposed upon game-keepers not duly appointed for killing or selling game, the same penalties as the 5 *Ann. c.* 14. imposed upon higlers, they understood that the offences mentioned in the 5 *Ann. c.* 14. *s.* 4., were subject to the same limitation of time as those described in the second section. For it would be a singular anomaly if it were necessary that a higler or a game-keeper whose certificate was not duly enrolled, should be convicted within three months after the offence committed; yet, that an unqualified person using a gun to kill game, or a game-keeper selling game without the consent of the lord of the manor by whom he is appointed, might be convicted at any time. — *Bayley* J. I think that the conviction in this case ought to have been made within three lunar months after the offence committed. The information in the case of *R.* v. *Tolley* was founded upon the 5 *Ann. c.* 14. § 4., and if rightly decided, that is an authority in point. It was the defence and not the charge that depended on the 9 *Ann. c.* 25. The latter statute, however, is explanatory of the former. The second section of the 5 *Ann. c.* 14. directs that, with respect to the offences therein described, the conviction shall take place within three months. Then the fourth section either has no limitation as to time, or if any, it is subject to that which is prescribed by the second. I think the words "*as aforesaid*," in the fourth section, do limit the time within which the conviction must take place to three months. They refer to "convicted," and that must mean convicted within the limitations mentioned in the second section, and that conviction is required to take place within three months after the offence committed. The words "convicted as aforesaid," occur twice in this clause, and they must apply to the time within which the conviction is to take place, or they can have no meaning whatever. For the justices before whom, and the witnesses upon whose testimony the conviction is to take place, are expressly mentioned in the clause. For these reasons, I think that the conviction in this case ought to have been made within three months after the offence was committed, and that not having been made within that time, the conviction must be quashed.—*Holroyd* J. I think that the case *R.* v. *Tolley* was rightly decided, but that it is not conclusive upon the present case. That charge was founded on the fourth section of the 5 *Ann. c.* 14.; the defence on the 9 *Ann. c.* 25., *viz.* that the defendant was a game-keeper, duly appointed under the provisions of

5 Ann. c.14.

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that act. Now the act expressly requires, that where a person acting as game-keeper, but who has not complied with the directions of the act, shall be convicted of killing game, &c., the conviction must take place within the time fixed by 5 *Ann. c.* 14. § 2. If, therefore, the fourth section of the 5 *Ann. c.* 14. were unlimited as to the time within which a conviction might take place, the 9 *Ann. c.* 25. would be a virtual repeal of it in that particular as to game-keepers. I think, however, that convictions upon 5 *Ann. c.* 14. § 4. were always intended to be made within the time specified in the second section. The words, "convicted as aforesaid," must refer to the conviction mentioned in the second section, and that is is a conviction of an offence committed within three months.—*Best* J. The words of this statute are very ambiguous. We ought however, in doubtful cases, to construe a penal statute in favour of the persons likely to be affected by it penally. Now it is certainly for the benefit of defendants that prosecutions for such offences should take place speedily. Their attention should be called to it so as to enable them to make a defence. I am of opinion that the words "convicted as aforesaid," refer to the conviction mentioned in the second section. Besides in the case of *R.* v. *Tolley*, the same point arose, and it was decided, after argument, that the conviction, not having been made within the three months, could not be supported.—Conviction quashed.

One penalty only can be incurred in one day, though many hares be killed on that day. The offence by stat. is the using dogs, not killing hares.

Shall forfeit 5l.] *Q.* v. *Matthews*, 10 *Mod.* 26. On a conviction, exception was taken that the person was charged with so many 5*l.* as he had killed hares in the same day. And the court was of opinion that the offence for which the statute gave the forfeiture, was the keeping of dogs and engines, and not killing the hares. If a man not qualified go hunting, and kill never so many hares on the same day, he would forfeit but one 5*l.* for it is but one offence; but if a man keep dogs, and go hunting several days, and kill hares, if it were thus laid, that he such a day kept dogs and killed, and then again such a day, by laying it thus severally, the offence is severed, and he shall forfeit 5*l.* for each offence.

In *R.* v. *Lovel*, 7 *T. R.* 152. Ld. *Kenyon* C. J. is reported to have said, "If a person go in pursuit of game, with a dog and gun on the same day, he can only be convicted in one penalty. From the report of *Molton* v. *Cheesely*, 1 *Esp.* 123., it might be supposed to have been decided that only one penalty would be incurred under the same act of parliament, but this has been considered as a mistake, and that if two distinct offences be committed against the same act, the defendant will be liable to several penalties. As this defect in the statute, making no distinction as to the quantity of game destroyed, tended to encourage offenders in their violation of the law, a provision was introduced by stat. 9 *Ann. c.* 25. (*post*, p. 592.), subjecting to a penalty of 5*l.* for every head of game a person may have in his possession; and thus the provisions of the legislature are become complete. 1 *Chitt. G. L.* 86, 87. *See also* 10 *East*, 21. *note* (*a*), *and post*, 593, 594.

A defendant may be convicted of several penalties in the same conviction.

R. v. *Swallow*, 8 *T. R.* 284. This was a conviction in the sum of 15*l.* for three penalties under the game laws, the defendant being prosecuted for that he, on three several days, kept and used traps and engines to kill game; the objection was that he was charged with three offences, and the conviction was general, without saying of how many.—The words were, "And thereupon he is convicted,

and for his several offences aforesaid hath forfeited the sum of 5*l.* for each offence, making together the sum of 15*l.* &c. &c." — Lord *Kenyon* C. J. said, There is no objection to the conviction on the ground that the defendant has been convicted of several penalties. It is the constant practice in actions on the game laws, and not unfrequent in convictions. Even in indictments for capital offences, several offences are sometimes charged, as burglary and stealing in the dwelling house to the value of 40*s.* I by no means wish that magistrates in drawing up convictions should set all forms at nought; but they ought not to be entangled in greater forms and ceremonies than the superior courts. The word "convicted" in this case applies to the several offences with which the defendant was charged, and to the evidence given in support of them; and the words following are, "and for his several offences *aforesaid,* &c." Taking the whole of the adjudication together, it is evident that the magistrate convicted the defendant in the three several offences charged.— Conviction affirmed. 5 Ann. c. 14.

To the poor of the parish where the offence was committed.] In some places a man may stand in one parish (or county), and shoot into two or three; in such case the place where the offence was committed is, where the party stood when he shot, and not where the object was which he shot at. *R.* v. *Alsop,* 1 *Show,* 339.

The offence shall be considered to have been committed in the parish in which the person stood when he committed the offence.

A conviction adjudging a distribution of part of a forfeiture to the overseers of the poor of a *township* (where the statute speaks of a *parish*) cannot be supported. *R.* v. *Priest,* 6 *T. R.* 538.

Qu. *Whether the conviction could be supported if it had appeared on the face of it that the township separately maintained its own poor?*

Where part of a penalty is given to the poor of the parish, the offence must be laid in the proper parish, but if otherwise disposed of, the parish is only laid for a venue, and the plaintiff may prove the defendant guilty in any other parish within the county. *Clark,* esq. v. *Taylor, Hertford Sum. Ass.* 1800. *Cor. Lord Kenyon* C. J. 3 *Esp.* 218.

By distress.] *R.* v. *Burchet,* 1 *Stra.* 567. The court ordered an attachment (unless cause shewn) against the town clerk of *Guildford,* and a defendant convicted on the game act, for granting and suing out a replevin of goods distrained for the penalty. But on shewing cause the next term, when *Eyre* J. only was present, he discharged the rule, because it was only a contempt to the inferior jurisdiction of the justices, and in that case the K. B. never interposes.

A distress for the penalties cannot be replevied.

But in the case of *R.* v. the sheriff of *Leicestershire* and others, 1 *Barnardist.* 110. an attachment was moved for against the defendants, for replevying three horses, which were seized as forfeited upon a justice's warrant, they being driven in a waggon contrary to act of parliament. The court, though they would not grant an attachment, yet made a rule to shew cause why an information should not go. And on shewing cause, the court thought there was enough to excuse the sheriff; but granted it against *Parsons* whose horses were seized, because he knew that the justices had granted this warrant; but it did not appear that the sheriff did.

And in the case of *R.* v. *Monkhouse,* 2 *Stra.* 1184. The court granted an attachment against the under sheriff of *Cumberland,* for granting a replevin of goods distrained on a conviction for deer-stealing.

5 Ann. c.14.

And sale.] *Feltham* v. *Terry, Bull. N. P.* 131. The defendant levied money by seizing and selling the plaintiff's goods, on a justice's warrant founded on a conviction; which conviction was afterwards quashed. And it was holden that an action for money had and received then lay for the clear money produced by the sale of the goods. See also 1 *T. R.* 387.

If there be goods, they must be destrained upon, before the offender can be committed.

For want of distress the offender shall be sent to house of correction.] *Hill* v. *Bateman*, before *Raymond* C. J. at *Westminster*. 2 *Stra.* 710. The defendant *Bateman*, being a justice of the peace, had convicted the plaintiff for destroying game, and though (as it was proved) the plaintiff had effects of his own which might have been distrained, which were sufficient to answer the penalty he had incurred, yet the defendant sent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of trespass and false imprisonment being brought against *Bateman* for this commitment, the C. J. was of opinion, that the action well lay.

A magistrate who convicts an unqualified person of killing game under the stat. 5 Ann. c.14., and causes his dog to be brought for the purpose of seizing it, may order the dog to be killed without any formal adjudication of seizure.

And any justice or lord may take away such dogs, &c.] *Kingsnorth* v. *Bretton and another*. *E.* 54. *G.* 3. 1 *Marsh.* 106. 5 *Taunt.* 416. *S. C.* This was an action against a magistrate and his clerk, for killing the plaintiff's dog, tried before *Thomson* C. B., at *Maidstone* spring assizes, 1814. It appeared that the plaintiff had been convicted of sporting without a qualification, in the penalty of 5*l.* He was then ordered to bring his dog, which he was accustomed to use in killing game, to the magistrate's house, which being done, the dog was, by order of the defendants, after conferring together, shot. It was contended on the part of the defendants, that by stat. 5 *Ann. c.*14. § 4. they were justified in thus destroying the dog, and the Chief Baron concurring, directed a nonsuit. On motion to set aside this nonsuit on the ground that though the magistrate might have taken the dog to his own use, he had no right to order it to be shot, it never having been in his possession, so as to vest the property in him; *Gibbs* C. J. said, "There is no doubt but the magistrate had a right to take the dog into his possession, neither is there any doubt that having so taken it, all the right of the former owner ceased, and the defendants could not be called to an account for any thing done by them afterwards. At the examination of the plaintiff before the magistrate it appeared, that he was unlawfully possessed of the dog, and he was therefore ordered to deliver it up; that being done, the magistrate, after he had communicated with his clerk on the subject, ordered it to be killed; undoubtedly, therefore, he meant to exercise the power which had been given him by the statute." The other judges concurring, the rule was refused.

If the lord of a manor is also a justice of the peace, and he takes away game, dogs, or engines from an unqualified person, and an action is afterwards brought against him; he is entitled to notice conformably to stat. 24 *G.* 2. *c.*44., for it will be presumed he acted as a justice. *Briggs* v. *Sir Frederick Evelyn*, 1 *H. Blac.* 114.

Certiorari.

And by stat. 5 *Ann. c.* 14. § 2. [No] *certiorari* shall be allowed to remove the conviction or other proceedings on this act, unless the party convicted shall before the allowance thereof become

(P.)

bound (P.) to the prosecutor in 50*l.* with such sureties as the justice before whom the conviction shall be made shall think fit, to

pay the prosecutors full costs and charges, to be ascertained on their oath, in 14 days after the conviction [confirmed], or *procedendo* granted. And in default thereof the justice shall proceed in execution of the conviction in such manner as if no *certiorari* had been awarded. 5 Ann. c.14.

Note: The word [*no*] is inserted instead of the words [*if any*] which are in the act, since that word seemeth necessary to make up the sense; and the word [*confirmed*] is added for the like reason. And indeed there have been too many inadvertencies in the drawing up of this act; for there is false grammar in no fewer than six places, besides other mistakes.

Recognizance. (a)

Upon this act there ought to be a single recognizance of the defendant, and two sureties in 50*l.*; and a recognizance taken in 25*l.* each, is not a compliance with the act. *R.* v. *Dunn*, 8 *T. R.* 218.

In a note to the case of *R.* v. *Dunn*, it is made a query, whether the 5 *G.2. c.*19. § 2. the general *certiorari* act, is applicable to the *certiorari* given by the stat. of *Ann.* Since as it is there observed, the stat. of *G.2.* refers to judgments and orders, subject to and made upon *appeal*, and the stat. of *Ann.* gives no appeal in this case. (See the stat. of *G.2. tit.* Certiorari, Vol. I.) And this doubt expressed by the reporter seems well founded: and if so, the question whether or not a *certiorari* issued upon the stat. of *Ann.* be within time, cannot arise. (K.) K.

And by stat. 4&5 *W.*3. *c.*23. § 3. The constable, authorised by a justice's warrant, shall enter into and search (in such manner and with such power as in case where goods are stolen, or suspected to be stolen,) the houses, outhouses, or other places belonging to such houses or suspected persons not qualified; and if any hare, partridge, pheasant, pigeon, fish, fowl, or other game, shall (upon such search or otherwise) be found, the offender shall be carried before a justice; and if such person do not give a good account how he came by the same, such as shall satisfy the said justice, or else shall not, in some convenient time to be set by the justice, produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof, he shall be convicted by the said justice of such offence, and upon such conviction shall forfeit for every hare, partridge, pheasant, pigeon, fish, fowl, or other game, any sum not under 5*s.* and not exceeding 20*s.*, half to the informer, and half to the poor, to be levied by distress and sale, rendering the overplus (if any); for want of distress, to be committed to the house of correction not more than one month, nor less than ten days, there to be whipt and kept to hard labour.

4&5 W.3. c.23. Search for game, with 20*s.* penalty for having it.

Or other game.] Rabbits killed in a private warren are not game within this act. 1 *L. Raym.* 151.

And by § 3. If any person so produced, or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender shall be discovered.

By § 7. No *certiorari* shall be allowed to remove any conviction or other proceeding on this act, unless the party convicted

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(a) See the form in *Paley, App.* [21.]

4 & 5 W. 3. c. 23. first become bound to the person or persons prosecuting, in 50*l.*, with such sufficient sureties as the justice shall think fit, to pay to the said prosecutors within one month after the conviction confirmed, or *procedendo* granted, full costs and charges; and in default thereof, the justice to proceed to the execution of the conviction.

5 Ann. c. 14. Carriers, innkeepers and others selling or having game in their possession.

By stat. 5 *Ann. c.* 14. § 2. If any higler, *chapman* (vide *infra*), carrier, innkeeper, victualler, or alehousekeeper, shall have in his custody or possession, or shall buy, sell, or offer to sell, any hare, pheasant, partridge, moor, heath-game, or grouse, every such higler, &c &c. unless such game in the hands of such carrier be sent up by some person qualified, shall be carried before a justice where the
(Q.) (R.) offence is committed (Q.); and being convicted (R.) thereof (in three months after the offence) on view or oath of one witness, he shall forfeit for every hare, pheasant, partridge, moor, heath-game, or grouse, the sum of 5*l.*, half to the informer, and half to the poor of the parish where the offence was committed, to be levied
(S.) by distress and sale (S.); for want of distress, to be committed
(T.) (T.) to the house of correction for the first offence three months, without bail or mainprize, and for every other offence four months.

What is an exposing to sale.

Exposing to sale.] *Warneford* v. *Kendall*, 10 *East*, 19. Action upon stat. 5 *Ann. c.* 14. for the penalty of 5*l.* against the defendant for *exposing to sale a hare*, not being qualified in his own right to kill game, nor entitled thereto under any person so qualified. It was proved that the plaintiff went out coursing, and killed a hare on *Shipston* manor, when the defendant, who was employed as a carpenter and woodman by Mr. *Earl*, the lord of the manor, and had directions from him to take poachers, came up and took the hare from the dog, and carried it away, notwithstanding the plaintiff claimed it, to Mr. *Earl*'s steward, according to his instructions.— Upon the authority of *Molton* v. *Cheeseley*, 1 *Esp.* 123. *Lawrence* J., against his own opinion, allowed a verdict for the plaintiff, with liberty to move to set aside the verdict and enter a nonsuit. A rule *nisi* having been obtained for that purpose, after cause shewn, Lord *Ellenborough* C. J. said, the question is whether the *possession* of the defendant was such as to constitute an offence, and subject him to the penalty under the statute? He did not claim the hare as his property, nor acquire the possession of it for himself, but for his master, on whose manor it was taken; and if this be an offence, no case can be stated in which an unqualified person can innocently come in contact with game. The case of *Molton* v. *Cheesely* (*a*) must have been imperfectly stated. The other judges agreed, and the rule was made absolute.

Certiorari. See 5 *Ann. c.* 14. § 2., *ante*, 590.

(*a*) The fact proved there was, that a pheasant had been killed *by accident* by the defendant's dog; and the defendant had afterwards carried it away. Two penalties were sought to be recovered, one for having the pheasant *in his possession* not being qualified, the other for keeping a dog to kill game. Mr. Justice *Buller* is said to have ruled that the plaintiff could go for one penalty only, "for that both offences being by the same act, the plaintiff could recover but one penalty under the same statute." The wording being *equivocal*, it was considered at first as if by the word *act* was to be understood *statute*; which it was agreed on all hands could not have been ruled by the learned judge; who probably said that two penalties could not be recovered under this statute for the same act done by the defendant. 10 *East*, 21. (*n.*)

R. v. *Samuel Clark Marsh*, *E.* 5 *G.* 4. 2 *B.* & *C.* 717. This was a conviction against a carrier, for having game in his possession. The conviction stated, that *Edward Howell*, of *Thetford, St. Peter's*, in the county of *Norfolk*, came before *A. B.* and *C. D.*, justices, and gave them to understand and be informed, that within three months last past, viz. on *August* 25th, 1823, *Samuel Clark Marsh*, of the city of *Norwich*, being a common carrier, unlawfully had in his hands and custody and possession as such carrier, divers, to wit, 22 partridges and 22 pheasants of the game of *England* (such partridges and pheasants not having been sent up nor delivered nor entrusted to the said *S. C. Marsh*, as such carrier as aforesaid, or in anywise howsoever, by any person or persons, in any manner qualified to kill game,) contrary to the statute, &c. The conviction then stated the summons of the defendant, his appearance, and that he pleaded not guilty. The following evidence, given by two witnesses for the prosecution, was then set out, that defendant was a common carrier, and that his waggon stopped in the parish of *Elden*, in the county of *Suffolk*, and that 22 live pheasants, two live partridges, and 20 dead ones, were in the waggon, and in the possession of the defendant, as such common carrier. The conviction then set out the evidence of one *John Cole*, a witness for the defendant, who stated, that he was in the employment of the defendant, as book-keeper on the day in question; that his master's waggon stopped that day at *Thetford*, on its way to *London*, and that he, *Cole*, saw the waggon at about six o'clock in the evening; that it stopped about an hour afterwards; that he saw nothing put into it, except a parcel, which he booked (which was not the parcel in question); that the waggon had been in *Thetford* some time before he saw it, and that he did not know what might have been put into it before he saw it; that *James Smith* was the driver of the said waggon, who was accustomed to drive it, that he had not seen him since that time; that one *Evans* was with the said *James Smith* as helper; that he did not examine the waggon, nor did he know what was in it; that he did not see any *Norwich* way-bill, nor was he accustomed to see one, unless any goods were left *Thetford*; that the said *S. C. Marsh* lived at *Norwich*, which is his constant residence; that he never saw him at *Thetford*, to see what was put into his said waggon, and that it was impossible for the said *S. C. Marsh*, if his waggoner or book-keeper put any thing into the waggon at *Thetford* or on the road, to know of it, unless he was informed of it; that the waggon came into *Thetford* considerably loaded, but that he, *John Cole*, did not know what was in it; that he was dismissed from his master's service about a week after the 25th of *August*, on account of the game found in the waggon on that day, and he had not been since employed by the said *S. C. Marsh*; that he and his father had been book-keepers to *S. C. Marsh* for forty years before. The conviction then stated, that, inasmuch as the defendant had not adduced any evidence of the said pheasants and partridges having been sent as aforesaid, by any person or persons qualified to kill game, nor any evidence that the defendant was qualified, by

In an information on stat. 5 Ann. c. 14. § 2 against a carrier between *Norwich* and *London*, for having game in his possession *as carrier*, it is not necessary to aver that the defendant is not a person qualified to kill game, nor that he had the game in his possession *knowingly*. The evidence for the prosecution was, that game was found in the defendant's waggon at an intermediate place between *Norwich* and *London*. Held, that there was sufficient *primâ facie* evidence that the defendant had it in his possession as *carrier*. The evidence for the defendant was, that his book-keeper living at that place did not know of any game having been put in there. Neither the driver of the waggon nor his assistant was called as a witness. Held, that this evidence did not vary the case, and that the defendant was properly convicted of having the game in his possession *as carrier*.

Rex v. Marsh. the laws of the realm, to kill or destroy game, or to have the said pheasants or partridges in his possession as aforesaid; it appeared to the justices that the defendant was guilty of the premises charged upon him in the information, and that they therefore adjudged him guilty of the offence.—*Nolan* and *Chitty* were to have argued in support of the conviction, but the Court called upon *Scarlett, contrà*, who contended, that the information ought to have negatived the qualification of the defendant, and also to have averred that he had the game in his possession *knowingly*. As to the first objection, the uniform course of the precedents of convictions against carriers is to negative the qualification. *R.* v. *Turner, ante*, p. 578. It is consistent with this information that the carrier in this case may have been a qualified person, and may actually have sent his own game by his own waggon; and if so, he clearly would not have committed an offence within the act.—[*Abbott* C. J. Then he would not have had the game in his possession *as carrier*.]—[*Bayley* J. The effect of your argument is, that if the carrier be qualified to kill game, he may carry the game of any person whatever, whereas the 5 *Anne, c.* 14. *s.* 2., declares, " that any carrier having game in his possession is guilty of an offence, unless it be sent by a qualified person."] The information ought to have alleged, that the defendant had the game in his possession *knowingly*. The fact of his having it in his possession without knowledge, cannot be an offence. Thirdly, the evidence does not shew that he had it in his possession *knowingly*. The bare fact of the goods having been found in his waggon is not *primâ facie* evidence that he knew them to be there, and the knowledge of the servant is not sufficient; for a master is not criminally responsible for the acts of his servant; and there is no evidence to shew, that the parcel was put into the waggon at *Norwich*, where the defendant resided; and if it were put in at an intermediate place, it is impossible that he could have any knowledge of it.—*Abbott* C. J. I am of opinion that this conviction ought to be affirmed. Two objections have been taken to the form of the information. The first is, that it does not negative the qualification of the defendant. The second is, that it does not aver that the defendant had the game in his possession *knowingly*. As to the first objection, I am of opinion that it is unnecessary in an information against a carrier to negative the qualifications of the defendant. For, whether he be qualified or not, if he has the game in his possession in the course of his trade and business as carrier, it is an offence within the act. If that were not so, an unqualified carrier would incur the penalty by carrying the game of other people not qualified, and a qualified carrier would not, although each were doing the very same act. It is the act of carrying the game of persons not qualified that constitutes the offence. As to the second objection, I am of opinion that it is not necessary that the information should allege that the defendant had the game in his possession *knowingly*. The 5 *Anne, c.* 14. § 2. has no such word. It merely says, " if the carrier have any pheasant in his possession he shall be convicted." If it were necessary

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to aver that the defendant had actual knowledge, it would cast on the prosecutor a burden of proof which could not easily be satisfied, particularly as the carriers themselves usually residing in one place, cannot have any actual knowledge of that which may be done by their servants in the course of a long journey. I am of opinion that it is not a sufficient defence for a carrier, in any case of this description, to shew that he did not know that the particular parcel contained game, although it might be a good defence to shew that it was put into the waggon by the servant for his own benefit, and contrary to the orders of, and in fraud of his master. As to the evidence, that was entirely for the consideration of the justices, but I think there was sufficient evidence to justify the conviction. It appeared that the hampers containing the game were in the defendant's possession, in his waggon employed in his business. That was, therefore, *primâ facie* evidence that the game was in his possession *as carrier*. And that was not rebutted by the evidence given for the defendant. For it appears merely that the book-keeper at *Thetford*, at an intermediate place between *Norwich* and *London*, did not know of any game having been put into the waggon there. The *Norwich* way-bill was not produced, and the game may therefore have been put into the waggon at *Norwich* with the actual knowledge of the defendant. Neither the waggoner nor his helper was called as a witness. The evidence for the defendant left the case, therefore, just where the evidence for the prosecution left it. That being so, I am of opinion that there was evidence that the defendant had the game in his possession *as carrier*, and therefore, that this conviction ought to be affirmed. — *Bayley* J. The general rule as to convictions is this. The information must bring the case within the clause imposing the penalty. If that contained the qualification, the information ought to have negatived it. Now, trying this case by that rule, it was not necessary to negative the qualification or to affirm knowledge. The words of the clause imposing the penalty, are not, if any *unqualified* carrier, but " if any carrier shall have game in his possession, such carrier (unless the game be sent expressly by a person qualified to kill game) shall be convicted." Then as to knowledge, the clause itself says nothing about it. If that had been introduced, evidence to establish knowledge must have been given on the part of the prosecutor; but under this enactment, the party charged must shew a degree of ignorance sufficient to excuse him. Here there was *primâ facie* evidence, that the game was in his possession as carrier. Then it lay on the defendant to rebut that evidence, and in considering how it was to be rebutted, we should consider how it might have been rebutted. The evidence for the defendant was, that a book-keeper living at *Thetford*, an intermediate place on the journey, did not know of the parcel having been put into the waggon. It might either have been put in with the assent of the carrier, or in fraud of him by his servants. The way-bill made out at *Norwich* ought to have been produced to shew that it was not put in with the assent of the master, or some evidence should have been given to shew that the game was put into the

Rex v. Marsh. waggon contrary to the order of the defendant, and for the benefit of his servant; and no such evidence having been given, I think the defendant was properly convicted. — *Littledale* J. I am of opinion, that it is not necessary in an information against a carrier for having game in his possession to negative the qualification of the defendant. The 5 *Anne*, c. 14. § 2. creates this offence, and it does not except the case of a carrier who is himself qualified to kill game. The clause does contain one exception, and that shews that it was not intended that any other exception should be allowed. I think, therefore, that it would not be any defence to a charge against a person for having game in his possession as a carrier, to shew that he was a person qualified to kill game. If he could shew, indeed, that it was his own game, that would negative the fact of his having it in his possession in his character of a common carrier. The fourth section makes it an offence for persons not qualified to keep greyhounds, &c. or other engines to kill or destroy game, but nothing is said in the second section as to the qualification. I doubt much whether it would be any defence upon the merits that the defendant himself did not know that the particular parcel contained game. A master in some cases is answerable criminally for the act of his servant, when the act is done by the servant for the benefit of the master and in the course of his employment. Thus, if a servant in the course of his employment sells a libel, the master is subject to an indictment. I think that, in this case, the master was properly convicted. The game was found in his waggon, employed in the course of his business as a carrier. That raises a presumption *primâ facie*, that he knew it was there, and that is not rebutted by the evidence given on the part of the defendant. Generally speaking, it is sufficient in an indictment or a declaration founded upon a statute, to pursue the words of the statute. Thus in an action of debt for using a gun with intent to destroy game, it is sufficient to aver generally that the defendant is not a qualified person. It has been held necessary, indeed, to negative in informations the particular qualifications. It is not necessary to enquire whether that rule were wisely introduced or not, for the word *knowingly* is not in the act at all. Therefore, according to the rule above laid down, it need not be stated in the information. For these reasons I am of opinion the conviction ought to be affirmed. — Conviction affirmed.

See tit. Certiorari, Vol. I. as to the mode of obtaining a *certiorari.*

By stat. 9 *Ann. c.*25. § 2. If any hare, pheasant, partridge, moor, heath-game, or grouse, shall be found in the shop, house, or possession of any person whatsoever, not qualified in his own right to kill game, or being entitled thereto under some person so qualified, the same shall be adjudged and taken to be an exposing thereof to sale within the true intent and meaning of this act, and of the stat. 5 *Ann. c.*14. See *R.* v. *Bellamy, ante,* p. 585. 9 Ann. c. 25. An unqualified person having game in possession or exposing to sale.

By stat. 28 *G.*2. *c.*12. § 1. (After reciting that doubts had arisen with respect to the meaning of the word "*chapman*" in the stat. of 5 *Ann. c.* 14.)—it is enacted, that if any person or persons whatever, whether qualified or not to kill game, shall sell, expose, or offer to sale any hare, pheasant, partridge, moor, heath-game, or grouse, every such person or persons shall for every such offence be subject and liable to the same forfeitures, pains, and penalties as are inflicted by the said act upon higlers, chapmen, &c. for buying, selling, or offering of game to sale. 28 G.2. c.12. Selling game.

§ 2. If any hare, pheasant, partridge, moor, heath-game, or grouse shall be found in the shop, house, or possession, of any poulterer, salesman, fishmonger, cook, or pastry-cook, it shall be deemed an exposing thereof to sale, within the meaning of this act and of stat. 5 *Ann. c.*14. and the forfeitures may be recovered, and penalties inflicted, as under stat. 5 *Ann.* or any other act since made for the preservation of the game. Game found in possession of poulterer, &c.

And by stat. 5 *Ann. c.* 14. § 4. Any justice of the peace, in his county, &c. and lord within his manor, may take away any such hare, pheasant, partridge, moor, heath-game or grouse, or any other game from any such higler, chapman, innkeeper, victualler, or carrier, or any other person not qualified (*a*) [which] shall be found in his custody or possession. 5 Ann. c.14.

"§ 3. And for the better discovery of any such higler, chapman, carrier, innkeeper, alehouse-keeper and victualler, as shall offer to buy or sell any hare, pheasant, partridge, moor, heath-game, or grouse, it is enacted, that any person that shall destroy, sell, or buy any hare, pheasant, moor, heath-game, or grouse, and shall within three months make discovery of any higler, chapman, carrier, innkeeper, alehouse-keeper, or victualler, that hath bought or sold, or offered to buy or sell, or had in their possession, any hare, pheasant, partridge, moor, heath-game, or grouse, so as any one shall be convicted thereof: such discoverer to be discharged of the pains and penalties hereby enacted for killing or selling such game, [and] shall receive the same benefit or advantage as any other informer shall be entitled to by virtue of this act, for such discovery and informations." Offenders may inform.

And by stat. 4 & 5 *W.*3. *c.*23. § 10. Whereas great mischiefs do ensue by inferior tradesmen, apprentices, and other dissolute persons, neglecting their trades and employments, who follow hunting, fishing, and other game, to the ruin of themselves and damage of their neighbours, therefore if any such person shall presume to hunt, hawk, fish, or fowl, (unless in company with the master of such apprentice duly qualified,) he shall be subject to the penalties of 4&5 W.3. c.23. Inferior tradesmen killing game.

(*a*) In the stat. it is "*and,*" instead of "*which.*"

4&5 W. 3. c. 23. this act, and shall be sued for their wilful trespass, in coming on any person's land, and if found guilty, the plaintiff shall not only recover damages, but full costs of suit.

Who shall be deemed *inferior tradesmen.*

Inferior tradesmen.] It has been doubted what is meant by "inferior tradesmen." In the case of *Buxton* v. *Mingay*, 2 *Wils.* 70., the question was, whether the defendant, a surgeon and apothecary, not qualified to kill game, came within that description, and the judges were equally divided.

Who shall be deemed dissolute persons.

Dissolute persons.] Mr. *Christian* mentions a case at *Hertford assizes* in which Lord *Ellenborough* C. J. said, that he should direct the jury to find that the defendant was *a dissolute person*, if he came to kill game for the purpose of selling it, or if he was drunk or abusive, or, if questioned where he lived or what was his name, he gave a false account of himself. (*a*) *Christian's G. L.* 98.

Using Snares to Destroy.

An unqualified person, by the orders and in the presence of his master, a qualified person, set on his master's grounds a trap for hares, &c. and afterwards finding a hare therein, carried it according to order to his master, who was not present when the hare was found: Held, that the defendant was not liable to the penalties for using snares to destroy game, or for exposing game to sale.

Walker v. *Mills*. *E.* 1 *G.* 4. 2 *Brod.* & *Bing.* 1. Debt to recover penalties, on 5th *Anne*, c. 14. § 4., and 9th *Anne*, c. 25. § 2., for using a snare to destroy game (the defendant not being qualified), and for exposing a hare to sale. Plea, general issue. The following facts were proved before *Garrow* B. at the last *Sussex* assizes. The defendant, a cottager in the employ of a qualified person, was on *Sunday* morning found with a hare in his possession, which he had just taken out of a trap placed on his master's property. The master stated, that the trap was placed there on the *Thursday* preceding by his direction, and in his presence, for the purpose of catching hares and rabbits which had annoyed him; that the defendant had received orders from him to bring to his (the master's) residence, whatever might be caught in the trap, and that the defendant had, accordingly, brought the hare in question to him on the *Sunday* morning on which it was seen in the defendant's possession. The learned judge thought the point new, but having directed the jury that this resembled the case of a qualified person attended by persons unqualified, assisting him in the operations of sporting; that the defendant was acting as servant to his master, and under his directions; and that, therefore, the possession of the hare by the servant must be taken to be the possession of the master; the jury found a verdict for the defendant. On motion for a new trial, it was contended that the result of the various cases on this subject was, that the right of a person qualified to kill game did not extend to the protection of persons unqualified, unless the qualified person were actually present; and that a qualified person had no right to send out one unqualified to kill game for him: that the master, in this case, though present at the setting of the trap, was absent when the hare was caught and found in the defendant's possession, and that such possession constituted an exposure to sale, under the 9th *Anne*, c. 25. § 2.; and *Molton* v. *Cheeseley* (1 *Esp.* 123.) was cited.—*Dallas* C. J. Cases of this sort frequently run into very nice distinctions, and I would not hastily lay down a general rule

(*a*) See the case of *Pallant* v. *Roll*, *ante*, 569.

which might afterwards be open to objection. If I had any doubt I would look into the cases that have been referred to; but I have none: nor have I any hesitation in saying, that this action is most improperly brought. For what are the circumstances of this case? The defendant was the servant of a qualified man, who, finding his land annoyed by hares and rabbits, ordered this trap to be set, with a view to their destruction. I take it to be perfectly clear, that a qualified person has a right to order a trap to be set for such a purpose, even in his absence; but, in this case, the qualified person was present, and superintended the setting of the trap. In this trap the hare was afterwards caught, and the catching was a catching by the master on his own land. Then as to the possession, the master ordered, that whatever was caught should be brought to him: the hare was brought the moment it was taken, and the possession of the servant in the act of taking the hare to his master, was under the master's direction, and the same as the possession of the master.—*Burrough* J. Actions of this kind do a great deal of mischief; there was no pretence for charging this defendant with an illegal taking or possession.—*Richardson* J. The trap being set by the master's order, and in his presence, the hare was in effect caught by him. As to the possession, it was proved that he ordered his servant to bring to him whatever might be taken; so that the case falls within the principle of *Warneford* v. *Kendall*. (10 *East*, 19., *ante*, p. 592.) The learned judge also referred to *Spurrier* v. *Vale*. (10 *East*, 413., *post*, 606.) Walker v. Mills.

By stat. 58 *G*. 3. *c*. 75. after reciting that "whereas the selling, exposing, or offering to sale, any hare, pheasant, partridge, moor heath game, or grouse, is by law prohibited: and whereas it is expedient, for the more effectual prevention of offences connected with the unlawful destruction and sale of game, to provide by law as herein-after is enacted;" it is therefore enacted, "that if any person or persons whatsoever, whether qualified or not qualified to kill game, shall buy any hare, pheasant, partridge, moor heath game, or grouse, every such person or persons who shall so offend, and thereof shall be convicted before any one or more justice or justices of the peace, magistrate or magistrates, acting for the county, riding, city, town, borough, division, or place where such offence shall be committed, by the oath of one or more credible witness or witnesses, shall for every hare, pheasant, partridge, moor heath game, or grouse, so bought as aforesaid, forfeit and pay the sum of 5*l*., one half to be paid to the informer, and the other to the poor of the parish where such offence shall be committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the justice or justices, magistrate or magistrates, before whom the offender shall convicted, rendering the overplus of such distress and sale (if any), to the party or parties, after deducting the charges of making the same; provided that such conviction be made within six calendar months after such offence committed." 58 G.3. c.75. Penalty on any persons buying game.

§ 2. "And for the better discovery of such person or persons as shall buy or sell any hare, pheasant, partridge, moor heath game, or grouse," it is enacted "that from and after the time of the passing of this act, any person that shall buy, sell, or offer to sell, or have unlawfully in his possession, any hare, pheasant, par- For the better discovery of persons buying or selling of game.

58 G.3. c.75. tridge, moor heath game, or grouse, and shall make discovery of any person that hath within six calendar months bought or sold any such game as aforesaid, so as any one shall be convicted of any such offence by virtue of this or any other statute now in force, such discoverer shall be discharged of and from all pains, forfeitures, and penalties to which he may be and shall have become liable, before and at the time of the making such discovery, by reason of the buying or selling, or offering to sell, or having unlawfully in his possession, any such game as aforesaid, any thing in any former statute contained to the contrary notwithstanding; and shall receive the same benefit and advantage as any other informer shall be entitled to, by virtue of this act, for such discovery and information;" provided, "that nothing in this act contained shall be held or construed to discharge such discoverer of or from any pains, forfeitures, or penalties, in respect whereof a prosecution shall be actually pending, or a conviction or judgment shall have been had against him, at the time of the making such discovery as aforesaid."

Prosecution pending.

Penalties under this act may be sued for to the sole use of prosecutor.

§ 3. "Wheresoever any person shall, for any offence to be committed against the provisions of this act, be liable or subject to any forfeiture or penalty upon conviction before any justice or justices, magistrate or magistrates as aforesaid, it shall and may be lawful for any other person whatsoever, either to proceed to recover the said forfeiture or penalty by information and conviction as aforesaid, or to sue for and recover the whole of such penalty for his own use by action of debt or on the case, bill, plaint, or information, in any of his majesty's courts of record, wherein no essoign, wager of law, or more than one imparlance shall be allowed, and wherein the plaintiff, if he recovers, shall have his double costs; and no part of the said penalty recovered in any such suit or action shall be paid or applied to or for the use of the poor of the parish wherein such offence shall be committed: provided always, that no such action, suit, bill, plaint, or information shall be brought or exhibited, but within the space of six calendar months next after the offence committed; and that in case of any second prosecution for one offence, the person doubly prosecuted may plead in his defence the former prosecution pending, or the conviction or judgment thereupon had."

Mutiny act. Soldiers.

By the yearly mutiny acts, if any officer or soldier, shall without leave of the lord of the manor under his hand and seal, destroy any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof on oath of one witness before one justice, every officer so offending shall forfeit 5*l.* to the poor, and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit 20*s.* in like manner. And if, upon conviction by the justices, and demand thereof made by the constables or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission.

The statute of 33 H.8. concerning shooting in cross-bows, hand-guns, &c.

Stat. 33 *H.* 8. *c.* 6. concerning shooting in cross bows, hand-guns, hagbuts, or demihakes, although not repealed, seemeth now to be obsolete, and superseded as it were by several subsequent statutes, and a matter more of curiosity than of use; therefore, it is thought unnecessary to insert it here, but to refer the reader to the statute itself.

§ IV. Certificate to be taken out.

Stamp duties.

By stat. 24 *G.* 3. *sess.* 2. *c.* 43. a stamp duty of 2*l.* 2*s.* 0*d.* was imposed on game certificates.

By stat. 25 *G.* 3. *c.* 50. the above duty is repealed, and a fresh stamp duty of 2*l.* 2*s.* 0*d.* imposed.

By stat. 48 *G.* 3. *c.* 55. this duty was increased to 3*l.* 3*s.* 0*d.* and by stat. 53 *G.* 3. *c.* 93. to 3*l.* 13*s.* 6*d.*

Stat. 52 *G.* 3. *c.* 93. Sch. (L.)

52 G.3. c.93. Sched. (L.)

A schedule of the duties payable in respect of killing game.

"Upon every person who shall use any dog, gun, net, or other engine, for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, or shall take or kill by any means whatever, or shall assist in any manner in the taking or killing by any means whatever, any game or any woodcocks, snipe, quail, or landrail, or any coney, by virtue of any deputation or appointment, duly registered or entered as gamekeeper for any manor or royalty in *England, Wales,* or *Berwick-upon-Tweed,* or for any lands in *Scotland:*

	£	s.	d.
If such person shall be a servant to any person duly charged in respect of such servant to the duties granted on servants in schedule (C.) No. 1. there shall be charged in respect of every such person acting by virtue of such deputation or appointment, the annual sum of	0	4	0
In addition to the duty of 1*l.* 1*s.* granted in respect of such person by the act passed in the 48th year of the reign of his present majesty. (48 G.3. c.55.)			
And where the duty granted by the said act shall not be chargeable in respect of such person, the annual sum of - - - - - - - - -	1	5	0
And if such person as last aforesaid shall not be a servant for whom the said duties on servants shall be charged, there shall be charged in respect of every such person acting by virtue of such deputation or appointment, the annual sum of - - - - -	0	10	6
In addition to the duty of 3*l.* 3*s.* granted by the said act.			
And where the duty granted by the said act shall not be chargeable in respect of such person, the annual sum of - - - - - - - - -	3	13	6

Upon every other person who shall use any dog, gun, net, or other engine, for any of the purposes before-mentioned, or shall take or kill, by any means whatever, or assist (*a*) in any manner in the taking, or killing, by

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Such of the duties in the schedule of 52 G.3. c.93. as relate to per-

(*a*) But by 54 *G.* 3. *c.* 141. the duties, provisions, and penalties contained in this schedule relating to persons aiding or assisting or intending to aid or assist in the taking or killing of any game, or any woodcock, snipe, quail, landrail, or coney, in the manner herein-after mentioned, shall, after the passing of this act, severally cease and determine; provided that the act of aiding and assisting as

52 G. 3. c. 93. Sched. (L.)

any means whatever, any game, or any woodcock, snipe, quail, or landrail, or any coney, there shall be charged the annual sum of - - - 0 10 6

In addition to the like duty of 3*l.* 3*s.* granted by the said act.

And where the duty granted by the said act shall not be chargeable upon such person, the annual sum of - 3 13 6

Exceptions to the above duties.

I.—The taking of woodcocks and snipes with nets or springes.

II.—The taking or destroying of conies by the proprietors of warrens, or on any enclosed ground whatever, or by the tenants of lands, either by himself, herself, or themselves, or by his, her, or their directions or command.

Rules for charging the said last-mentioned Duties.

Rules.

I.—Every person who intends to use or shall use at any time after the fifth day of *April* one thousand eight hundred and thirteen, any dog, gun, net, or other engine, for any of the purposes mentioned in the schedule to this act annexed, marked (L.), shall before he shall so use the same, in any year, and every person who intends to take or kill, or to assist in the taking or killing any game, woodcock, snipe, quail, landrail, or coney, shall, before he shall so take or kill, or assist in the taking or killing the same, pay or cause to be paid in each year, unto the collectors of the duties mentioned or referred to in the other schedules of this act, for the parish, ward, or place where he shall reside, if in *England*, or to the collector of the like duties, or his deputy or sub-collector for the shire, county, borough, or place where he shall reside, if in *Scotland*, or one of them, respectively as aforesaid, for the time being, the duty hereby made payable, and shall obtain a certificate thereof in the manner herein directed, which certificate shall continue in force until and upon the fifth day of *April* next after the time of issuing the same, and no longer.

II.—Every collector, or his deputy or sub-collector, on application to him made by any person residing within the limits of his collection, and on payment to such collector, or his deputy or sub-collector, of the duty hereby made payable, shall give a receipt for the same, which receipt shall be signed by such collector, or his deputy or sub-collector, and made out conformable to such of the forms for certificates in the schedules to this act annexed, as the case may require; and every such receipt shall be a charge on the parish or place for which such collector, or his deputy or sub-collector, shall be appointed, for the sum therein expressed, in like manner and to the like effect as if the said sum had been previously

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...sons assisting in killing of game shall cease, if the assistance be given to another who has obtained a certificate, &c.

aforesaid, and in the said act mentioned (52 *G.* 3. *c.* 93.) shall be done in the company or presence and for the use of another person who shall duly have obtained a certificate in his own right, according to the directions of the said act, and who therein shall by virtue of such certificate then and there use his own dog, gun, net, or other engine, for the taking or killing of such game, woodcock, snipe, quail, landrail, or coney, and who shall not act therein by virtue of any deputation or appointment.

assessed and levied by such collector, or his deputy or sub-collector, under the warrant of the commissioners acting in the execution of this act, for which receipt the said collector, or his deputy or sub-collector, shall be entitled to demand and receive from such person the sum of one shilling over and above the said duty, and no more, which sum shall be deemed the compensation to such collector, and his deputy or sub-collector, for his pains and care in executing this act; and the duty so received shall be paid to the receiver-general, or his deputy, at his or their next receipt of duties, in full and without deduction; provided that the receipt given for the duties contained in this schedule shall not be liable to any stamp duty whatever. 52 G.3. c.93. Sched. (L.) Rules.

III. — Every such receipt, being delivered to the clerk of the commissioners acting for the district where the person aforesaid shall reside, shall be exchanged for a certificate made out in one of the forms in the schedule to this act annexed, marked (N.), corresponding with such receipt, which certificate the said clerk is hereby required, on demand, to make out and deliver *gratis* to such person, in exchange for the said receipt.

IV. — The receipts so exchanged to be entered by the clerks in books for that purpose, and being examined by the commissioners, shall be a sufficient authority to cause an assessment to be made on the persons mentioned in such receipts in the sums paid by them, which assessments shall be as binding on the collectors, and others acting in the execution of this act, and on the parishes for which such collectors shall have been appointed, as any assessment to be made by the commissioners under the acts; and the commissioners shall return duplicates to the receiver-general, and to the commissioners of taxes.

V. — The commissioners for taxes shall cause forms and receipts to be distributed amongst the clerks, and by them to the collectors.

VI. — Appoints surveyor of the district to execute the duty of a clerk, where no clerk is appointed,

VII. — If a deputation to a servant is revoked in the midst of a year, the master or mistress may obtain a renewed certificate for a servant, free from any duty or fee.

VIII. — The commissioners for the affairs of taxes shall once, or oftener, in every year, as soon as conveniently may be, after such certificate shall have been issued, cause the names and residences of the several persons to or for whom such certificates have been granted for that year, in each county in *Great Britain*, distinguishing the persons acting under any deputations or appointments from others; and the manors, royalties, or lands, for which deputations or appointments have been granted, and also distinguishing the rate of duty assessed, to be inserted in some newspaper circulated in each respective county, or in such other newspaper, and in such manner as to them shall seem proper.

IX. — Neither the assessment of the duty hereby imposed, nor the payment thereof, nor the certificate delivered, nor any thing herein contained or done in pursuance of this act, shall authorize or enable any person to act in the manner described in this schedule, at any time or times, or in any manner prohibited by any statute in force at and immediately before the passing of this act; nor unless such person shall be duly qualified so to do, under and by virtue of the said statutes; and all penalties and forfeitures, actions

Sched. (L.) 52 G.3. c.93. and suits, for offences against such statutes, shall and may be prosecuted and maintained for such offences, as if this act had not been made.

X.— No assessment or certificate under the said acts and this act, or payment of the duty thereby imposed, by or for any person acting under a deputation or appointment, shall be received in evidence, or be available in law or equity, in any suit or prosecution under this act, where proof shall be given of doing or having done any act for any of the purposes mentioned in this schedule, out of the precincts or limits of the manor, royalty, or lands for which such deputation or appointment was made or granted.

XI.—If any person shall be discovered doing any act whatever, in respect whereof such person shall be chargeable as aforesaid, by any assessor or collector of the parish where any such person shall then be, or by any commissioner for the execution of this act, acting for the county, riding, division, or place, in which such person shall then be, or by any lord or lady, or gamekeeper, of the manor, royalty, or lands, wherein such person shall then be, or by any inspector or surveyor of taxes, acting in the execution of the said acts or this act, for the district in which such person shall then be, or by any person duly assessed to the duties granted in this schedule, or consolidated therewith, or by the owner, landlord, lessee, or occupier of the land in which such person shall then be, it shall be lawful for such assessor, collector, commissioner, or gamekeeper, inspector, or surveyor, or other person as aforesaid, or such owner, landlord, lessee, or occupier of land as aforesaid, to demand and require, from the person so acting, the production of a certificate issued to him for that purpose, which certificate every such person is hereby required to produce to the person so demanding the same, and to permit him to read the same, and (if he shall think fit) to take a copy thereof, or any part thereof; or in case no such certificate shall be produced to the person demanding the same as aforesaid, then it shall be lawful for the person having made such demand to require the person so acting forthwith to declare to him his Christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed to the duties by this act granted or consolidated therewith; and if any such person shall, after such demand made, wilfully refuse to produce and shew a certificate issued to him for that purpose, or in default thereof as aforesaid, to give in to the person so demanding the same his Christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed, or shall produce any false or fictitious certificate, or give any false or fictitious name, place of residence, or place of assessment, every such person shall forfeit and pay the (B.) sum of twenty pounds (B.), to be sued for, recovered, and applied in the manner hereinafter directed. (*a*)

XII. — If any person or persons shall, after the fifth day of *April*, one thousand eight hundred and thirteen, in *England* or *Wales*, or after the twenty-fourth day of *May* one thousand eight hundred and thirteen, in *Scotland*, do any act for any of the purposes mentioned in this schedule, without having obtained such certificate

(*a*) See *Molton* v. *Rogers*, 4 *Esp.* 215.

as is directed by this act, in order to an assessment for the year 52 G.3. c.93.
wherein such person or persons shall so act, every such person Sched. (I.)
shall forfeit and pay the sum of twenty pounds (C.), to be sued for, Penalty 20*l.*
recovered, and applied in the manner hereinafter directed; and (C.)
every such offender shall also be liable to the payment to his majesty, his heirs or successors, to the full duty of three pounds thirteen shillings and sixpence sterling, over and above the said penalty to be charged in the assessment of the parish or place where the offence shall be committed, by way of increased charge by the inspector or surveyor of the said parish or place: which increased charge may be made at any time within six calendar months after the duty shall have accrued, and the said charge shall be allowed by two commissioners, according to the directions of the acts relating to the duties of assessed taxes, subject to appeal whenever such commissioners shall appoint the time and place for hearing and determining the said appeal.

XIII.—It shall be lawful for any two commissioners for executing this act, or for any one justice of the peace of the county, riding, or division, or the shire or stewartry, or for any city, borough, liberty, or place wherein any offence or offences mentioned or described in this schedule shall be committed, such justice being also a commissioner for executing this act; and he and they is and are hereby required, upon information or complaint (B.) (C.) to him or them made of any such offence or offences committed within the district where he or they shall act as such commissioner or commissioners, within three calendar months after the offence shall be committed, to summon (D) the person or persons accused, and also the witnesses on either side, to appear before him or them; and upon the appearance of the person or persons accused, or in default of his or their appearance according to such summons, to proceed to hear and determine the matter in a summary way; and upon due proof made thereof, either by the voluntary confession of the person or persons accused, or by the oath of one or more credible witness or witnesses, to give judgment for the penalty or penalties, or for such part thereof, to which part thereof the said commissioners or justice shall think proper to mitigate the same (the same not being in any case mitigated to less than one moiety of the said penalty or penalties); and in default of payment of the same at the time of conviction, to award and issue his or their warrant or warrants (F.), under his or their hand and seal, or hands and seals, for levying the penalty or penalties so adjudged, together with the reasonable costs and charges attending the same, as hereinafter directed, of the cattle, goods, and chattels of the offender or offenders, and to cause sale to be made of the said cattle, goods, and chattels so distrained, in case they shall not be redeemed within four days; and the money arising from such sale shall, in the first place, be liable for payment of the said penalty or penalties adjudged to be paid, and in the next place for payment of the costs attending the information, conviction, and warrant, or informations, convictions, and warrants, to be settled by the said commissioners or justice, and indorsed on such warrant or warrants; and also the reasonable costs attending the distress and keeping the goods and chattels distrained, and maintaining the cattle, if any, during the four days allowed to redeem the same, and also the expence of the sale thereof, and of returning the said warrant or

Two commissioners, or one justice being also a commissioner.

(B.) (C.)

(D.)

Power of mitigation to not less than one half of the penalty.

(F.)

Costs.

52 G. 3. c. 93. Sched. (L.)

For want of sufficient distress, commitment to the house of correction not exceeding six calendar months, unless the penalty be sooner paid.

(G.)

(H.)

Appeal.

warrants to the commissioners or justice, and entering the same, with an indorsement thereon of what has been done therein; and where sufficient cattle, goods, or chattels of such offender or offenders cannot be found, to commit (G.) such offender or offenders to the house of correction, there to remain for any space of time not exceeding six calendar months, unless the said penalty or penalties shall be sooner paid; and if such person or persons shall find himself or themselves aggrieved by the judgment of such commissioners or justice, then he or they shall and may, upon giving security (H.) to the amount of double the said penalty or penalties, appeal to the justices of the peace at the next general quarter sessions for the county, riding, or division, or to the justice clerk, or other officer of the court of justiciary of the shire, stewartry, city, liberty, or place in *Scotland;* which courts respectively are hereby empowered to examine witnesses upon oath, and finally to hear and determine the same; and in case the judgment of such commissioners, or justice or justices, shall be affirmed, it shall be lawful for the said court of quarter sessions, or court of justiciary, to award the person or persons to pay costs occasioned by such information, conviction, and appeal, as to themselves shall seem meet. (*a*)

Witnesses neglecting to appear to give evidence

XIV.—If any person or persons shall be summoned as a witness or witnesses to give evidence before such commissioners or justice receiving such information, or before the courts of quarter sessions or justiciary, upon appeal touching any of the matters contained in such information, either on the part of the prosecution or the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for his, her, or their neglect or refusal, to be allowed by the commissioners, or justice or justices, or court before whom the prosecution shall be depending, then and in every such case every such person shall forfeit, for every such offence, the sum of ten pounds, to be recovered, levied, and paid in such manner, and by such means, as other penalties mentioned in this schedule may be recovered, levied, and paid.

Where a statute gives a party aggrieved a right of appeal, on giving security to a specified amount, he may enter and respite his appeal at the next sessions, after having given such security, without notice to the other side, but after the appeal has been respited, if he does not give the usual notice of trying it, the sessions will be authorized to dismiss it altogether.

(*a*) *The King* v. *The Justices of Salop*, *T.* 59 *G.* 3. 2 *B.* & *A.* 694. *Comyn* had obtained a R. N. for a mandamus to the sessions to enter continuances, and hear the appeal of *John Rogers*, against the conviction of a magistrate, under 52 *G.* 3. c. 93. *sched.* (L.) *rule* 12. The defendant was convicted in the penalty of 20*l.* for using greyhounds, for the purpose of killing a hare, not having taken out a certificate. Immediately upon his conviction, he entered into the recognizance required by the act, to prosecute his appeal against it. At the next sessions, he accordingly entered his appeal, and it was respited by the court. At the following sessions he again appeared for the purpose of trying the appeal, but it being objected that there had not been eight days' notice given to the convicting magistrate, as was required by the rule of the sessions, the magistrates dismissed the appeal, and confirmed the conviction. On moving for the R. N., the case of *Rex* v. *Justices of Leeds*, (4 *T. R.* 583.) was relied on, and it was contended, that the entering into the recognizance before the magistrate, dispensed with the necessity of giving the usual notice to him of trying the appeal. — After argument. *Abbott* C. J. said, it was, perhaps, sufficient for the party to entitle himself to enter his appeal at the *January* sessions, that he had given the security required by the act, although no notice of appeal had been given by him; but when once he had entered his appeal, he was bound to conform to the practice of the sessions. It was therefore necessary for him to have given the usual notice of trying his respited appeal at the *Easter* sessions, and not having done so, the magistrates were authorized to dismiss the appeal altogether. — R. D. with costs.

XV. — The commissioners or justice before whom any offender shall be convicted shall cause the said conviction to be made out in the manner and form following, or in any other form of words to the like effect (*mutatis mutandis*): that is to say, 52 G. 3. c. 93. Sched. (L.)

Form of conviction.

BE it remembered, that on the ——— *day of* ——— *in the year of our Lord* ——— *at* ——— *in the* ——— *of* ——— A. B. *of* ——— *was duly convicted by me* [or, *us*] *of* [here state the offence] *and adjudged to pay the sum of* ——— *for his said offence.*

Given under the hands and seals [or *hand and seal*] *of* ——— *being commissioners acting in the execution of the acts relating to assessed taxes for the district of* ——— [or, ——— *being a justice of the peace for* ———, *and a commissioner acting in the execution of the acts relating to assessed taxes for the district of* ———]

Conviction to be entered.

And every such conviction shall be entered and registered upon the books of assessment of the commissioners of the district where the offence was committed; and after such entry and registry shall be transmitted to the court of appeal, as herein directed, to be filed there of record; and the said conviction or entry of the same in the said books of assessment, or any examined copy thereof, shall be received in evidence before the respective commissioners for executing this act, in all matters relating to the duties contained in this schedule; and no conviction of such commissioners or justice shall be removable by any process whatever into any other court of law or equity, or be subject to revision in any manner, other than as aforesaid.

XVI. — All penalties and shares of penalties imposed by and recovered or paid under the authority of the rules contained in this schedule, shall be added to the first or supplementary assessment of the parish or place where the offence shall be committed (as the case shall require), and shall be paid to the collector or collectors of the duties contained in this schedule, for such parish or place, to be by him or them accounted for in the same manner, and paid to the receiver general at the same times as the duties contained in this act are to be accounted for and paid, and shall and may be distributed, apportioned, and applied in such manner as other penalties may by the said acts relating to the said duties be distributed, apportioned, and applied.

Exemptions from the Duties in Schedule (L.)

Any of the royal family.

§ V. Concerning Gamekeepers.

22 & 23 C. 2. c. 25. Who may appoint a gamekeeper. A.

By stat. 22 & 23 *C.* 2. *c.* 25. § 2. "All lords of manors, or other royalties, (not under the degree of an esquire) may by writing under their hands and seals (A.) authorize one or more gamekeeper or gamekeepers within their respective manors or royalties."

Not under the degree of an esquire.] In the case of *Jones* v. *Smart*, 1 *T. R.* 44. *Willes* J. said, that the lord of a manor is certainly not an esquire by virtue of his manor or royalty, though in com-

mon acceptation he is considered as such; and that no lord of a manor under that rank can appoint a gamekeeper, whatever his estate may be.

And in *Calcraft* v. *Gibbs*, 5 *T. R.* 19. Ld. *Kenyon* C. J. said, That the lord of a manor cannot convey to another the power of appointing a gamekeeper, without a conveyance also of the manor itself. Such a power is a mere emanation of the manor, and it is inseparable from it. It is a mere shadow, accompanying the substance.

5 Ann. c. 14. With power to kill game.

And by stat. 5 *Ann. c.* 14. § 4. Any lord or lady of a manor may empower his or her gamekeeper or gamekeepers, upon his or her own lordship or manor as aforesaid, to kill hare, pheasant, partridge, or any other game whatsoever; but if the said gamekeeper shall, under colour or pretence of the said power and authority to kill or take the same for the use of such lord or lady, and (*a*) afterwards sell or dispose thereof to any person or persons whatsoever, without the consent or knowledge of the lord or lady of such manor or manors that hath given such power or authority, in manner as aforesaid; and shall be thereof convicted, upon the complaint of such lord or lady of any manor, and upon the oath of one or more credible witnesses, before any one or more of her majesty's justices of the peace as aforesaid, upon such conviction such gamekeeper shall be committed to the house of correction for the space of three months, and there to be kept to hard labour.

9 Ann. c. 25. One gamekeeper in one manor; and to be entered with the clerk of the peace.

But by stat. 9 *Ann. c.* 25. § 1. No lord of a manor shall make or appoint above one person to be a gamekeeper within any one manor, with power *to kill* the game thereof. And the name of such person shall be entered with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof shall be granted by the clerk of the peace, on payment of one shilling.

And if any other gamekeeper, whose name shall not be so entered, *who shall not be otherwise qualified* by the laws of this kingdom to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor heath game, or grouse, he shall on conviction before one justice, on oath of one witness, forfeit for every offence 5*l.*, half to the informer and half to the poor; to be levied by distress and sale; for want of distress, to be sent to the house of correction for three months, for the first offence, and for every other offence four months. Prosecution to be within three months after the offence committed. (See stat. 5 *Ann.* c. 14. § 2. *ante*, p. 592.)

Who shall not be otherwise qualified.] From these words it seemeth clear that a gamekeeper who is qualified in his own right to kill game need not be entered with the clerk of the peace.

25 G. 3. c. 50. to take out a certificate on stamp.

But by stat. 25 *G.* 3. *c.* 50. § 2. Every deputation of a gamekeeper shall be registered with the clerk of the peace of the county or place where the manor shall lie, and such gamekeeper shall take out a certificate thereof annually, the duties upon which are specified in stat. 52 *G.* 3. *c.* 93. Sch. (L.) *ante.* p. 597.

§ 9. " If any gamekeeper, to whom such deputation shall be granted, shall, for twenty days next after the granting thereof,

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(*a*) The word, *and*, seems redundant here.—K.

neglect or refuse to register the same, and take out a certificate thereon, as aforesaid, he shall forfeit 20*l*." 25 G. 3. c. 50.

§ 14. "And in case of a new deputation of a gamekeeper, the same shall be registered with the clerk of the peace, and a certificate thereon obtained as aforesaid; whereupon the former certificate shall be void, and the person acting under the same, after notice to him given of such new certificate, shall be liable to the penalties prescribed by this act, in the same manner as if no certificate had been granted to him."

Not to extend beyond the manor.

§ 17. "No certificate obtained under any such deputation shall authorize any such gamekeeper to take or destroy game out of the precincts or limits of the manor for which such deputation was given."

22 & 23 C. 2. c. 25. Gamekeeper's power to search.

By stat. 22 & 23 *C.* 2. *c.* 25. § 2. The gamekeeper (so authorised) may search for dogs and engines, and seize the same for the use of the lord, or destroy them.

But it hath been adjudged that an authority from the lord of the manor is not sufficient of itself for this purpose, but that he ought to have a warrant from a justice of the peace. At least it may be safe to have such warrant, especially if any houses are to be entered and searched. *Carpenter* v. *Adams*, *Comb.* 183.

For it would give too great a power to the gamekeepers to leave it in their discretion to search what places they should think proper, as also to constitute them the judges whether such or such a person were or were not qualified to kill game. Therefore it is best to have a warrant from a justice of the peace, after information and oath of the offence first made.

A gamekeeper, by his deputation, has no authority to seize game, or take it from an unqualified person. *Bird* v. *Dale*, 1 *Moore's C. P.* 290.

Whether he may carry a gun out of the manor.

A justice of the peace has no right to seize the gun of a gamekeeper, although he is sporting for the purpose of killing game in another manor than that for which he has received his deputation; for the power of seizure under stat. 5 *Ann.* *c.* 14. § 4. extends to those persons only who are not qualified to *keep* engines for the destruction of game, and gamekeepers are qualified to *keep* such engines *anywhere*. *Rogers* v. *Carter*, *C. P.* 2 *Wils.* 387. It was admitted, however, in this case, that if the gamekeeper had actually *killed* game beyond the limits of his own manor, he would have been liable to the penalty of 5*l*. 2 *Selw. N. P.* 840.

In an action for penalties for killing game, to which an appointment under stat. 5 *Ann. c.* 14., by a lord of a manor, was pleaded as an exemption, the court of K. B. decided that the true question was, not whether the gamekeeper acted *bonâ fide*, but whether the person under whose deputation he acted had any colourable title to the manor or not; and that in such a case, evidence of real title is admissible to rebut the presumption of colourable title. Where, therefore, the only evidence of colourable title to the manor was the appointment since 1806 of two gamekeepers, evidence of actual title was held to be admissible, both for the purpose of repudiating the colourable title, and also of showing that it was within the knowledge of the plaintiff that manorial rights had been openly exercised by others, and that he had no ground of claim whatever. *Hunt* v. *Andrews*, *H.* 60 *G.* 3. & 1 *G.* 4. 3 *B.* & *A.* 341.

Enrolments of deputations, Evidence.

Books preserved in the office of the clerk of the peace, containing enrolments of ancient deputations of gamekeepers for a certain manor, are admissible in evidence to show that those persons, who caused the enrolments to be made, had exercised rights as lords of the manor; and they are admissible, without proof that the original deputations have been lost, or that the gamekeepers, named in them, have acted under their authority. *S. C.* & 1 *Phill. Ev.* 415.

48 G. 3. c. 93. Lords of manors may appoint gamekeepers, whether qualified or not, &c.

By stat. 48 *G.* 3. *c.* 93. After repealing stat. 1 *J.* 1. *c.* 27. § 2. and stat. 3 *G.* 1. *c.* 11., by which no lord of a manor could appoint any person to be a gamekeeper, with power to kill game, unless he was qualified, or a domestic servant, or immediately employed to kill game only for the use of his lord or lady, it is enacted, § 2., that it shall be lawful for any lord or lady of any manor to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, or whether a qualified person or not, to be a gamekeeper to any such manor, with authority to such person as gamekeeper to kill game within the same for his own use, or for the use of any other person or persons whatever to be specified in such appointment or deputation, whether qualified or not; and no person so appointed gamekeeper as aforesaid and empowered to kill game for his own use, or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or lady of the manor for which such deputation shall be given, shall be deemed or taken to be, or entered or paid for as the gamekeeper or male servant of the lord or lady making such appointment or giving such deputation as aforesaid; any thing in any act or acts of parliament to the contrary notwithstanding.

Gamekeepers so appointed to have the same rights as if qualified.

And by § 3. Any person appointed gamekeeper under the authority of this act to kill game for his own use or the use of any other person, shall have the same rights, privileges, power, and authority as if he had been legally qualified and appointed to act as gamekeeper, to kill game for the use of the lord or lady of the manor appointing such gamekeeper, under any laws in force immediately before the passing of this act.

A college or a corporation may appoint a gamekeeper: and it is not necessary that it should appear in the deputation that he was to kill game for the sole use and benefit of the lord of a manor. Although unqualified he is protected, unless it be proved that he killed game otherwise than for the use of the lord. *Spurrier* v. *Vale*, 1 *Campb.* 457. 10 *East*, 413.

59 G. 3. c. 102. Appointment of gamekeepers in Wales.

And by stat. 59 *G.* 3. *c.* 102. "*for further regulating the appointment of gamekeepers in* Wales." After reciting that "whereas there are now several districts and lands, within the principality of *Wales*, which are not known to be comprehended within the boundaries of any manors, lordships, or royalties; and there are also several other districts and lands within the principality, which formerly belonged to or formed part or parts of such manors, lordships, or royalties, but which have been alienated therefrom or enfranchised by the lord or lords for the time being of such manors, lordships, or royalties, and many of such districts and lands are very extensive: And whereas the owner or owners of such districts and lands cannot, nor can any other person or persons appoint any

gamekeeper or other servant to kill game on such lands for the use of the owner or owners thereof, without subjecting such gamekeeper or other servant to the penalties imposed by divers acts of parliament made for the preservation of the game; which regulations and enactments have tended greatly to the encouragement of poachers and other idle and disorderly persons, to destroy the game within such districts of the said principality." For remedy whereof, it is enacted, "that after the 1st of *August* 1819 it shall be lawful to and for all and every persons and person, being seized in fee or as of freehold, or otherwise beneficially entitled in his, her, or their own right, of and in any lands situate and being within the said principality, of the full and clear annual rent of five hundred pounds, and not being within the bounds of any manor, lordship, or royalty, or being within the precinct or bounds of any manor, lordship, or royalty, shall have been or shall be enfranchised or alienated therefrom; or † to appoint by any writing or writings under his, her, or their hand or hands, a gamekeeper to preserve, or to course, hunt, shoot at, or kill game, for the use of the person or persons who shall make such appointment, in, over, and upon such his, her, or their lands, and in, over, and upon the lands of every other person or persons who shall, by licence in writing under his, her, or their hand or hands, authorize him, her, or them to appoint a gamekeeper or gamekeepers, or other servant or servants, to preserve, course, hunt, shoot at, or kill game in, over, and upon the lands of the person or persons not being within the bounds of any manor, lordship, or royalty, so granting such licence."

59 G. 3. c. 102.

Persons possessing certain property may appoint gamekeepers.

† *Sic.*

§ 2. And "every such gamekeeper having such appointment as aforesaid, during the continuance of such appointment, shall not be made subject or liable to any penalties imposed by any former statutes of this realm, for having any game in his or their custody or possession, or for coursing, hunting, shooting at, or killing game, on or upon any lands mentioned in his or their appointment or appointments, and whereon the person or persons making such appointment or appointments has or have any power, licence, or authority to make or grant any appointment or appointments by virtue of this act: Provided always, that nothing herein contained shall extend or give, or be construed to extend or give, any power or authority to any person or persons to make or grant any such appointment or appointments, licence or licences, to course, hunt, shoot at, or kill game in, over, or upon his, her, or their lands, situate or being within the precinct or boundary of any manor, lordship, or royalty, unless such lands shall have been enfranchised or alienated therefrom, without the licence or consent in writing of the proprietor or proprietors of such manor, lordship, or royalty, having the right to pursue and kill game in, upon, or over such lands, first had and obtained; and where in any existing lease or demise, or agreement for demising any lands, the lessor or lessors, landlord or landlords thereof, hath or have not reserved the right or power of hunting, shooting, or sporting, then no such appointment or appointments, licence or licences, shall be valid, so as to authorize any such gamekeeper or gamekeepers, servant or servants, to enter upon any such lands, to preserve, course, hunt, shoot at, or kill game thereon, without the consent in writing of the person or persons in the actual possession of such lands first had and obtained."

Gamekeepers not subject to penalties under former acts.

59 G.3. c.102.

Lords of extensive manors may appoint gamekeepers for districts.

§ 3. "And whereas the manors, lordships, and royalties, within the said principality, are in many instances extremely extensive, and comprehend very large tracts of country: And whereas by an act passed in the ninth year of the reign of queen *Anne*, intituled 'An act for making the act of the fifth year of her majesty's reign, for the better preservation of the game, perpetual, and for making the same more effectual,' it is among other things enacted, that only one gamekeeper shall be appointed to kill game within any one manor: and whereas such restriction hath, on account of the extent of the said manors, lordships, and royalties, been found extremely inconvenient, and tended greatly to the destruction of the game within the said principality;" it is enacted, "that the lords and ladies of such manors, lordships, and royalties, and the stewards of the crown for such manors, lordships, and royalties as appertain to his majesty within the said principality, shall be, and they are hereby authorised respectively to nominate and appoint gamekeepers for such districts and divisions of their respective manors, lordships, and royalties as they shall think fit; and that each and every gamekeeper so appointed, shall have the like powers, privileges and authorities within such district or division as any gamekeeper appointed for the whole of a manor hath or would have by virtue of any act now in force: provided always, that nothing herein contained shall be construed to authorize the appointment of more than one gamekeeper for the same district or division, and that all appointments under this act shall be registered with the clerk of the peace in like manner, and be subject to all other regulations which are enacted with respect to the appointment of gamekeepers of manors by any act now in force."

Persons granting appointments may annul the same, and grant others in lieu thereof.

§ 4. It shall be lawful for all and every persons and person, who shall or may grant or make any appointment or licence, by virtue of this act, to revoke, annul, or render void all and every such consent, appointment, and licence, and to grant or make other consent or consents, appointments or licences in lieu thereof, as often as to him, her, or them, shall seem proper.

This act not to extend to persons killing game without certificate.

§ 5. Provided, "that nothing herein contained shall extend or be construed to extend the protection of this act, to any person or persons killing game without a certificate taken out or purchased according to the provisions of the act now in force respecting game certificates, or in any manner to affect the rights of H.M., or his successors, or of any other person or persons, in, to, or over any manor, lordship, or royalty, within the said principality."

§ VI. Prevention of Persons going armed by Night for the Destruction of Game.

57 G.3. c.90.

By stat. 57 *G*.3. c.90. After reciting that "whereas idle and disorderly persons frequently go armed in the night-time for the purpose of protecting themselves, and aiding and abetting and assisting each other in the illegal destruction of game or rabbits: And whereas such practices are found by experience to lead to the commission of felonies and murders: for the more effectual suppression thereof," it is enacted, "that if any person or persons, having entered into any forest, chase, park, wood, plantation, close,

Persons found at certain times

or other open or inclosed ground, with the intent illegally to destroy, take or kill game or rabbits, or with the intent to aid, abet and assist any person or persons illegally to destroy, take or kill game or rabbits, shall be found at night, that is to say, between the hours of six in the evening and seven in the morning from the first day of *October* to the first day of *February*, between seven in the evening and five in the morning from the first day of *February* to the first day of *April*, and between nine in the evening and four in the morning for the remainder of the year, armed with any gun, cross-bow, fire-arms, bludgeon or any other offensive weapon, every such person so offending, being thereof lawfully convicted, shall be adjudged guilty of a misdemeanour, and shall be sentenced to transportation for seven years, or shall receive such other punishment as may by law be inflicted on persons guilty of misdemeanour, and as the court before which such offenders may be tried and convicted shall adjudge; and if any such offender or offenders shall return into *Great Britain* before the expiration of the term for which he or they shall be so transported, contrary to the intent and meaning hereof, he or they so returning, and being thereof duly convicted, shall be adjudged guilty of felony, and shall be sentenced to transportation for the term or terms of his or their natural life or lives."

57 G.3. c.90.

within any forest, &c. with intent to destroy take, or kill game, deemed guilty of misdemeanour.

Transportation for seven years.

Offenders returning to be transported for life.

§ 2. "And for the more easy and speedy bringing the offenders against this act to justice, be it further enacted, that it shall and may be lawful to and for the ranger and rangers, and to and for the owner and owners, occupier and occupiers of any such forest, chase, park, wood, plantation, close or other open or inclosed ground, and also for his, her or their keeper and keepers, servant and servants, and also for any other person or persons, to seize and apprehend or to assist in seizing and apprehending such offender or offenders by virtue of this act, and by the authority of the same to convey and deliver such offender or offenders into the custody of a peace officer, who is hereby authorised and directed to convey such offender or offenders before some one of his majesty's justices of the peace for the county or place where such offence shall be alleged to have been committed: or in case such offender or offenders shall not be so apprehended, then it shall and may be lawful for any such justice, on information (Z.) before him on the oath of any credible witness or witnesses, to issue his warrant (A. a.) for the apprehension of such offender or offenders; and if upon the apprehension of any such offender or offenders it shall appear to such justice, on the oath of any credible witness or witnesses, that the person or persons so charged hath or have been guilty of the crime of being found armed at night as aforesaid, it shall and may be lawful for such justice to admit such person or persons so charged to bail, and in default of bail to commit (B. b.) such person or persons to the county gaol until the next general quarter sessions of the peace, or the next general commission of gaol delivery, to be holden for the same county or place, there to be tried and dealt with as by this act is directed; and if in *Scotland*, until such person or persons so charged shall be dealt with as any person or persons charged with a transportable offence may be dealt with according to the law and practice of *Scotland*."

Any person may apprehend such offender.

Or one justice may issue his warrant to apprehend them. (Z.) (A. a.)

Offenders may be bailed. (B. b.)

§ 3. "If any person or persons shall after the passing of this act unlawfully enter into or be found in any forest, chase, park, wood,

Persons found in any forest, &c. at night

57 G.3. c.90.

with any engine, &c. for destroying game may be taken before a justice.

plantation, close or other open or inclosed ground at night, according to the provisions of this act, with respect to what shall be deemed night for the purposes hereof, having any net, engine or other instrument, for the purpose and with the intent to destroy, take or kill, or shall wilfully destroy, take or kill game, it shall and may be lawful to and for the ranger and rangers, and to and for the owner and owners, occupier and occupiers of any such forest, chase, park, wood, plantation, close or other open or inclosed ground, and also for his, her or their keeper and keepers, servant and servants, and also for any other person or persons, to seize and apprehend, or to assist in seizing and apprehending such offender or offenders by virtue of this act, and by the authority of the same to convey and deliver such offender or offenders into the custody of a peace officer, who is hereby authorised and directed to convey such offender or offenders before some one of H. M's. justices of the peace for the county or place where such offence shall be alleged to have been committed, to be dealt with according to law." (*a*)

By § 4. and § 5. stats. 56 *G.*3. *c.*130, and 39 & 40 *G.*3. *c.*50. are repealed.

3 G. 4. c. 114. Imprisonment with hard labour.

And by stat. 3 *G.*4. *c.*114. Whenever any person shall be convicted of having entered any open or enclosed ground, with intent there illegally to destroy, take or kill game or rabbits, and having been there found at night armed with any offensive weapon, it shall be lawful for the court before which any such offender shall be convicted, or which by law is authorised to pass sentence upon any such offender, to award and order (if such court shall think fit) sentence of imprisonment with hard labour for any time not exceeding the term for which such court may now imprison for such offences, either in addition to or in lieu of any other punishment which may be inflicted on any such offenders by any law in force before the passing of this act (*viz.* 5 *Aug.* 1822.); and every such offender shall thereupon suffer such sentence in such place and for such time as aforesaid as such court shall think fit to direct.

R. v. Nash and Weller. It is not necessary that the prisoners should have their arms in actual possession at the time they are discovered.

Found at night armed with any gun, &c.] *William Nash* and *James Weller* were convicted at *Maidstone Spring assizes*, 1819, *MS. C. C. R.* before *Bayley* J. under this act, upon a charge of being found armed in the night in a wood which they had entered with intent to kill the game. The prisoners were shooting in the wood in the night, and the flash of one of their guns was seen by a keeper who was upon the watch for them, but before they were seen, they had abandoned their guns in the wood, and were creeping away upon their knees. A doubt arising whether the statute applied where the prisoners had not their arms in their possession, or within their reach at the time they were discovered, judgment was respited, and the point referred to the Judges, who held the conviction right.

If several persons are out together, and any one of them is armed, the others are liable to be convicted under stat. 57 *G.* 3. *c.* 90.

(*a*) i. e. by conviction before a justice of the peace, and payment of a fine. See stat. 13 *G.*3. *c.*80. *post.*

N. B. The necessity of an information and summons appears to be dispensed with.

R. v. *Smith, O'Flannaghan, and Preston, MS. C. C. R.* The prisoners were tried before *Holroyd* J., at the summer assizes for the county of *Oxford, July*, 1818, on an indictment upon the stat. 57 *G.* 3. *c.* 90., for a misdemeanour in unlawfully entering a park at *Bletchington*, and being found there armed with guns, between 6 o'clock in the evening and 7 o'clock in the morning, *to wit*, about one o'clock of the 30th *January*, 1818, with intent to kill game against the form of the statute. The second count stated the offence to be in a certain inclosed ground. There was evidence to shew that the three prisoners, and another man, came together into a *spinney* (which was an inclosed piece of ground at *Bletchington*, within a larger piece, which was called a park, and was also walled round) in the night time between the hours stated in the indictment, for the purpose and with the intent to kill game there; that one of them shot a hen pheasant, which a witness saw in *O'Flannaghan*'s hand — that they had two guns with them — one *O'Flannaghan* had, but which of the other three men had the other gun, the witness could not say. The jury found all the three prisoners guilty. His lordship reserved the point, whether *Smith* and *Preston* could be considered to come within the statute, as persons armed with guns, &c. On the case, the judges were clear, that if any one was armed, every one of the party was within the act, and held the conviction of all three right. Vide 1 *East's P. C.* 413, 414.

If several persons are together, and any one is armed, all are within the statute.

But if several are out together, and one has arms *without the knowledge of the others*, the others are not liable to be convicted under this act.

Johnson and *Southern* went into a close in the night to kill game; *Johnson* had a loaded pistol, but *Southern* did not know it. On case, the judges thought *Southern* not liable to be convicted under this act. *R.* v. *Johnson and Southern*, Decided in *E. T.* 1821. *MS. C. C. R.*

§ VII. Laws for preserving the four-footed Game in particular.

Which said laws seem to concern all persons whomsoever, whether qualified or not.

Now the four-footed game, or the game of beasts, are of three kinds, *viz.*

1. *Deer.*
   (*a*) *Deer-stealing.*
   [3 Ed. 1. c. 20. — 21 E. 1. st. 2. — 1 H. 7. c. 7. — 16 G. 3. c. 30. — 42 G. 3. c. 107. — 51 G. 3. c. 120. — 4 G. 4. c. 54.]
   (*b*) *Destroying Covert for Deer.*
   [28 G. 2. c. 19.]
2. *Hares.*
   [14 & 15 H. 8. c. 10. — 1 J. 1. c. 27. — 22 & 23 C. 2. c. 25. — 9 Ann. c. 25. — 13 G. 3. c. 80. — 48 G. 3. c. 93. — 4 G. 4. c. 54.]
3. *Conies.*
   [1 H. 7. c. 7. — 21 Ed. 1. st. 2. — 3 J. 1. c. 13. — 22 & 23 C. 2. c. 25. — 9 G. 1. c. 22. — 5 G. 3. c. 14. — 52 G. 3. c. 93. 4 G. 4 c. 54.]

§ VII. 1. (a) Deer-stealing.

3 Ed. 1. c. 20. By stat. 3 *Ed.* 1. *c.* 20. If *trespassers in parks* be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass, and they shall have three years' imprisonment, and after shall make fine at the king's pleasure (if they have whereof), and then shall find good surety that after they shall not commit the like trespass; and if they have not whereof to make fine, after three years' imprisonment, they shall find like surety; and if they cannot find like surety, they shall abjure the realm. And if none sue within the year and a day, the king shall have the suit.

Trespasses] This is, when a man either chaseth in a park, or endeavours to kill some of the game thereof. 2 *Inst.* 199.

In parks] This act, because it is very penal, is to be understood, not of a nominal park erected without warrant, but of a lawful park only, whereupon three things are required; 1. A liberty, either by grant or prescription; 2. Inclosure, by pale, wall, or hedge; and, 3. Beasts, savages of the park. 2 *Inst.* 199.

21 Ed. 1. st. 2. Forests and parks. By stat. 21 *Ed. st.* 2. intituled *De malefactoribus in parcis.* If any forester or parker shall find any trespassers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do continue their malice, and disobeying the king's peace do flee, or defend themselves with force and arms, although such forester, parker, or their assistants, do kill such offenders, they shall not be troubled upon the same, nor suffer any punishment. 1 *East's P.C.* 256.

1 H. 7. c. 7. By stat. 1 *H.* 7. *c.* 7. Unlawful hunting in a forest or park is, under certain circumstances, made felony. Upon the construction of that statute, Lord *Coke*, 3 *Inst.* 21. reports a very singular opinion of the judges, *M.* 19 & 20 *Eliz.;* which opinion is controverted by Lord *Hale.*—1 *Hale*, 659.

But this stat. 1 *Hen.* 7. was superseded by the Black Act, 9 *G.* 2. *c.* 22., which was virtually repealed, as far as respects stealing or hunting deer, by stat. 16 *G.* 3. *c.* 30., and this latter has been in part repealed, and in part amended by stat. 42 *G.* 3. *c.* 107. These two latter statutes, therefore, now contain the law on this head.

Previous to stat. 42 *G.* 3. *c.* 107. the judges were unanimously of opinion that stat. 16 *G.* 3. *c.* 30. amounted to a repeal of the felony (by the Black Act) of singly killing deer in a park inclosed. *R.* v. *Davis*, 1 *Leach*, 271. But it may be observed, that though stat. 16 *G.* 3. *c.* 30. expressly repeals nine different statutes by name, it does not in terms repeal that part of the Black Act which

4 G. 4. c. 54. relates to this point. *MS.* (*D.*) But now by stat. 4 *G.* 4. *c.* 54. so much of stat. 9 *G.* 1. *c.* 22. § 1. as excludes the benefit of clergy in the case of the unlawfully and wilfully hunting, wounding, killing, destroying, or stealing any red or fallow deer, or of the forcibly rescuing any person being lawfully in custody for any of the said offences, is repealed; and from and after the passing of this act (8 July 1823) every person duly convicted of any such felony shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned only or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three years.

42 G. 3. c. 107. By stat. 42 *G.* 3. *c.* 107. § 6. So much of stat. 16 *G.* 3. *c.* 30. as

imposes any penalty, forfeiture, or punishment, on persons who shall hunt, course, or take in any slip, noose, toil, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or carry away any fallow deer, [*note* the omission of the word *red*, which is in stat. 16 *G.* 3. *c.* 30.] in any forest, chase, purlieu, or ancient walk, whether inclosed or not, or in any inclosed park, paddock, wood, or other inclosed ground where deer were, or had been, or should be usually kept, without the consent of the owner, or being otherwise duly authorized, or who shall be aiding, &c. therein, shall be by this act, with respect to the said offences, repealed. And by stat. 42 *G.* 3. *c.* 107. § 1. if any person shall wilfully course or hunt, or take in any slip, noose, toil, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or shall carry away any *red* or fallow deer, kept or being in the inclosed part of any forest, chase, purlieu, or ancient walk, or any inclosed park, paddock, wood, or other inclosed ground, where deer are, have been, or shall be usually kept, without the consent of the owner of such deer, or without being otherwise duly authorized; or shall knowingly be aiding, abetting, or assisting therein or thereunto, every person so wilfully offending shall be deemed to be guilty of felony, and on conviction thereof adjudged to be transported for seven years. See 2 *Russ.* 1185.

42 G. 3. c. 107.

16 G. 3. c. 30.

42 G. 3. c. 107. Coursing, taking, killing, or shooting at deer in inclosed ground felony.

Offenders shall be transported for seven years.

In *R.* v. *Rogers, at Worcester Spring Assizes,* 1811, *Lawrence* J. decided, that to support an indictment on this stat. for coursing deer in an inclosed ground, it is necessary, on the part of the prosecution, to call the *owner* of the deer to prove that he did not give his consent to the prisoner to course them. 2 *Campb.* 654.

And by § 2. Every person who shall commit any of the said offences in the uninclosed part of any such forest, &c., or shall be abetting therein as aforesaid, shall for every such offence forfeit 50*l.*, and if the offender shall be a keeper of or intrusted with the custody or care of deer, in the forest, &c. where the offence shall be committed, he shall forfeit double.

Coursing, &c. in uninclosed ground, penalty of 50*l.*

Keepers offending to forfeit double.

By stat. 51 *G.* 3. *c.* 120., reciting that by stat. 42 *G.* 3. *c.* 107. no provision is made for a mitigation of the pecuniary penalties thereby imposed for committing the several offences therein mentioned, it is enacted, that, on the conviction of any offender under the said act, for wilfully coursing or hunting, or taking in any slip, noose, toil, or snare, or killing, wounding, or destroying or shooting, or otherwise attempting to kill, wound, or destroy, or carrying away any red or fallow deer, kept or being in the uninclosed part of any forest, chase, purlieu, or ancient (*a*) *wall*, without the consent of the owner of such deer, or without being otherwise duly authorized, or for knowingly being aiding, abetting, or assisting therein or thereunto, it shall be lawful for the magistrate by and before whom such offender shall be convicted, to mitigate the penalty of 50*l.* thereby imposed for the first offence, to any sum, at his discretion, not less than 20*l.*, to be levied in the manner directed by the said recited act; provided always, that every other provision in the said recited act shall remain as if this act had not been passed.

51 G. 3. c. 120. On conviction of offenders under the recited act, any magistrate may mitigate the penalty of 50*l.* to 20*l.*

By stat. 42 *G.* 3. *c.* 107. § 3. The powers, provisions, rules, methods, forms, restrictions, and all other matters and things enacted, in the 16 *G.* 3. *c.* 30. concerning the seizing, apprehending, and

42 G. 3. c. 107. Provisions of 16 G. 3. c. 30. extended to this act.

(*a*) In stat. 42 *G.* 3. *c.* 107. § 1. this is *walk.*

42 G. 3. c. 107.

conviction for offences against the said act, and concerning the recovery, application, and disposal of the penalties and forfeitures therein mentioned, and of appealing from convictions and bringing actions; and the costs given by the said act are to be applied to this act (42 *G.* 3. *c.* 107.) where applicable.

16 G. 3. c. 30. Justice may issue his warrant to search houses, &c. for venison or engines. (U.) Penalty on persons in whose custody any such shall be found, &c.

By stat. 16 *G.* 3. *c.* 30. § 4. It shall be lawful for one justice, on complaint to him made on oath by any credible person that there is reason to suspect any person of having in his custody or possession, or in any dwelling-house, out-house, yard, garden, or place, any red or fallow deer which shall have been unlawfully killed, or the head, skin, or other part thereof, or any slip, noose, toil, snare, or other engine, suspected to be used for the unlawful taking of deer, by his warrant (U.) to cause such person, and such dwelling-house, out-house, garden, or place to be searched; and if any such shall be found, to cause the same, and such person so having possession, or in whose dwelling-house, out-house, garden, or other place the same shall be found, to be brought before any justice having jurisdiction; and if such person shall not produce before such justice the party of whom he received the same, or satisfy such justice that he came lawfully by such deer, or the head, skin, or other part thereof, or had a lawful occasion for such slip, noose, toil, snare, or other engine, or did not keep the same for any unlawful purpose, every such person shall forfeit not exceeding 30*l.* nor less than 10*l.*, at the discretion of such justice.

Red or fallow deer] Though this statute, 16 *G.* 3. *c.* 30., only mentions red or fallow deer, it was holden in *March*, 1801, that the cross breeds, such as what is called a bastard menald, bred from a menald buck and a fallow doe, are within the act. 2 *East's P. C.* 609.—The same words, "red or fallow deer," are used in the next statute, 42 *G.* 3. *c.* 107., passed the year after the above decision; and therefore it may be presumed that a similar construction will also be put on this act.

Justices may examine every person through whose hands such venison, &c. has passed.

And by § 5. If any red or fallow deer suspected to have been unlawfully killed, or the head, skin, or other part of such deer, shall, on search under a warrant from a justice, be found in the possession or custody of any person, or in any dwelling-house, out-house, garden, or other place, or shall be proved to have been in the possession, house, out-house, garden, or place of any person who may be justly suspected to have come dishonestly or unlawfully by the same as aforesaid; and such person or persons so in possession, or the owner or occupier of such dwelling-house, out-house, garden, or other place, shall not under the provisions aforesaid be liable to conviction; in such case, for the discovery of the party who actually killed or stole such deer, it shall be lawful for any justice having jurisdiction, as the evidence given and the circumstance of the case shall require, to summon before him every person through whose hands such deer, or the head, skin, or other part thereof shall appear to have passed; and if the person and persons from whom such deer, or the head, skin, or other part thereof shall appear to have been first received, or who having had possession thereof shall not give proof to the satisfaction of such justice, that he, she, or they, came lawfully by the same, such person or persons shall on every conviction, forfeit any sum not exceeding 30*l.*, nor less than 10*l.*

Suspected persons having had venison, &c. in

§ 6. If it shall appear on the oath of one witness, that any person hath, or have had, in his possession, house, out-house,

garden, or place, any red or fallow deer, or the skin, head, or other part thereof, and shall be reasonably suspected to have come dishonestly or unlawfully thereby; every such person, and all others through whose hands the same shall appear to have passed under the like suspicion, may be proceeded against in like manner and form, and on conviction shall be subject and liable to the same penalty, as if such deer, or the head, skin, or other part thereof had been found in the possession, house, out-house, garden, or place of such person, on search made by warrant as aforesaid. 16 G.3. c.30. possession, may be proceeded against as if it was found in their possession.

§ 7. If any person shall set, lay, or use any net, wire, slip, noose, toil, or other engine, for the purpose of taking or killing deer, within or upon any forest, chase, purlieu, or ancient walk, or in the ring or outer fence or bank dividing the same from the adjoining lands; or in any inclosed park, paddock, wood or ground where deer are, have been, or shall be usually kept, (such person not being the owner of such forest, chase, purlieu, ancient walk, park, paddock, wood, or ground, or intrusted with the care of the deer within the same), and shall be convicted of any such offences; he shall forfeit for the first offence not exceeding 10*l.* nor less than 5*l.*, and on every conviction after the first, any sum not exceeding 20*l.* not less than 10*l.* Penalty on persons setting wires, &c. to kill deer.

§ 8. If any person shall wilfully pull down or destroy, or cause to be wilfully pulled down or destroyed, the pale or pales or any part of the walls of any forest, chase, purlieu, ancient walk, park, paddock, wood, or other ground, where any red or fallow deer shall be then kept, without the consent of the owner or person chiefly intrusted with the custody thereof, or being otherwise duly authorized; he shall be subject to the forfeiture and penalty hereby inflicted for the first offence of killing any deer. Pulling down pales or other fences of any forest, park, &c.

§ 9. If any person, carrying any gun or other fire arms, or any sword, staff, or other offensive weapon, shall come into any forest, chase, purlieu, or ancient walk, or into any inclosed park, paddock, wood, or into any other ground where deer are usually kept, be the same inclosed or not inclosed, with an intent unlawfully to shoot at, course, or hunt, or to take in any slip, noose, toil, snare, or other engine, or to kill, wound, destroy, or take away any red or fallow deer; it shall be lawful for the ranger or keeper, or person intrusted with the care of such deer, to seize and take from such person in and upon such forest, &c. &c. for the use of the owner thereof respectively, all such guns, fire-arms, slips, nooses, toils, snares or other engines, and all dogs there brought for coursing deer, in like manner as the game keepers of manors are impowered by law within their respective manors, to seize and take dogs, nets, or other engines, in the custody of persons not qualified by law to keep the same. And if any such person shall there unlawfully beat or wound any ranger or keeper or his servants or assistants in the execution of his or their office, or shall attempt to rescue any person in the lawful custody of any such ranger, keeper, servant, or assistant, he shall be adjudged guilty of felony, and being convicted on indictment shall be transported to one of H. M.'s plantations in *America* for seven years. Seizing of dogs, guns, or other engines. Persons beating the keeper, shall be guilty of felony.

§ 10. On complaint or information on oath of one witness before one justice of any offence against this act; such justice (except in such cases only where the justice is specially directed previously to summon the party before him) may by his warrant cause the How justices to proceed on information of offences.

16 G. 3. c. 30. party charged by such complaint to be apprehended by warrant, and brought before him at such time and place as shall be specified in such warrant; and thereupon such justice shall proceed to hear and determine the matter of such complaint.—And in case where it is provided by this act that the party complained of shall be summoned to appear, if the party so summoned shall not appear, then on proof of the service of such summons, either personally, or by leaving the same at his dwelling-house, lodgings, or other usual place of abode, it shall be lawful for the justice to apprehend him by warrant and to proceed as if no previous summons had been directed by this act.

§ 15. And it shall be lawful for any keeper or under-keeper of any forest, &c. &c. where deer are, have been, or shall be usually kept, and their servants or assistants, to seize and apprehend upon the spot any person whom they shall discover in the actual fact of hunting, coursing, killing, wounding, shooting at, taking, destroying, or carrying away any red or fallow deer, from any forest, chase, purlieu, or ancient walk, whether inclosed or not, or in any inclosed park, paddock, wood, or in any other inclosed ground, or attempting so to do; or in setting or laying any net, wire, slip, noose, toil, snare, or other engine therein, for the taking, killing, or destroying of deer therein; and to carry such offender before some neighbouring justice, to be dealt with according to law.

Levying of penalties.

§ 11. The pecuniary penalties of this act may be recovered before one justice for the county or other division, on the oath of one witness or on confession; half to the king, to be paid for his use into the hands of such person as the justice shall direct, and half to the informer. And in case of non-payment thereof with the charges incident to the conviction, immediately upon the conviction, the same and charges incident to the conviction shall be levied by warrant of such justice by distress and sale; and for want of sufficient distress the offender, except in such cases where it is otherwise provided by this act, shall be committed to the common gaol for one whole year, unless the said penalty and charges shall be sooner paid, (but see stat. 42 *G.* 3. *c.* 107. § 3. *post*, p. 619. and *ante*, p. 613.)

If not paid on conviction, may be levied by distress.

§ 12. And if upon conviction he doth not immediately pay the penalty, the justice may order him into custody during such time, not exceeding three days, as such justice shall think proper to allow for return of the warrant of distress.

§ 13. Provided, that if it shall appear to the satisfaction of such justice, either by confession of the party or otherwise, that he hath not goods or chattels sufficient whereon to levy the penalty, the justice may, without issuing any warrant of distress, commit the party convicted, as if a warrant of distress had been issued, and a *Nulla Bona* returned thereon; and see Vol. I. *tit.* Distress.

§ 14. Provided also, that if any person committed for any first offence against this act, shall before his commitment to prison, procure security to be given by two sufficient sureties, to the satisfaction of such justice, for payment of the penalty with the charges incident, within six days, inclusive of the day of conviction; the justice may accept of such security, and on non-payment thereof at the time stipulated, may cause the party and his said sureties to be apprehended by warrant, and commit them to the common gaol for such time as the party convicted was liable to have been impri-

soned if no such security had been given, unless the penalty *or* (*a*) charges shall be sooner paid. 16 G.3. c.30.

§ 16. Finally; if an offender for his first offence against this act be committed for want of sufficient distress, and shall, whilst in gaol, obtain the consent in writing of the prosecutor, and also of the owner, ranger, forester, keeper, or other person chiefly intrusted with the care of the deer in the forest, &c. or other place, for his enlargement, the justices in sessions may cause him to be brought before them, and by their order may direct the gaoler to set him at liberty.

Offender informing.

§ 17. If any offender shall make discovery of any other offender, so as he be convicted, he shall be discharged of all the forfeitures and penalties of this act by him incurred previous to such discovery.

Conviction.

§ 18. The conviction shall be fairly written on parchment or paper in the following form of words, or any other form to the like effect:

(W.)

(W.)

BE it remembered, that on the ——— *day of* ——— *in the year* ——— A. O. *was upon the complaint of* A. I. *convicted before* ——— *of the justices of the peace for* ——— *in pursuance of an act passed in the sixteenth year of the reign of his majesty king* George *the third, for* ——— [as the case shall be]. *Given under my hand and seal the day and year above written.*

And the same shall be certified to the next sessions, to be there filed amongst the records.

Certiorari.

§ 19. No *certiorari* shall be allowed to remove any conviction or other proceedings on this act, unless the party convicted shall before the allowance of such *certiorari* become bound to the prosecutor in 100*l.* with sufficient sureties as the justice before whom the offender was convicted [*shall approve of*] (*a*), with condition to pay to the prosecutor within thirty days after such conviction confirmed, *on* (*b*) a procedendo granted, his full costs and damages to be ascertained upon his oath:—— and shall also become bound to the justice before whom the conviction was made, with such sufficient sureties as the justice shall approve of, in the penalty of 60*l.* for each offence, with condition, to prosecute such writ of certiorari with effect, and to pay to the justice the forfeiture to be distributed as by this act is directed, or to render to the justice such person convicted within 30 days next after the conviction shall be confirmed, or a procedendo granted: and in default thereof, it shall be lawful to proceed to levy the penalty, as if no certiorari had been awarded.

§ 20. And after confirmation of the conviction by any of the superior courts at *Westminster*, and delivering to the justice the rule whereby the conviction hath been confirmed, he may proceed against the party in the same manner as if a *procedendo* had been granted.

§ 23. But by a subsequent clause in the act it is enacted, that no conviction shall be removed or removeable by *certiorari* or any other writ or process whatsoever, into any of H.M.'s courts of record at *Westminster*; any law or statute to the contrary notwithstanding.

(*a*) The word *or* seems here to be by mistake inserted instead of the word *and*. For, as the clause now stands, it seemeth that the parties may be dismissed on payment of the charges only.

(*a*) These words, or some such like, are necessary to complete the sense; having been omitted probably out of the statute by mistake.

(*b*) So the statute: the word *on* should be *or*.

16 G.3. c.30. [How far these seemingly contradictory clauses are reconcileable, or whether either or which of them is in force, may afford matter of attentive consideration. Indeed there seems to be a fatality attending these game laws; several of the most considerable of them not having been digested with the care and precision requisite in penal cases.]

Appeal. § 21. If any person shall think himself aggrieved by the determination of the justice, and shall not have sought his remedy by removing the matter by *certiorari* as aforesaid, he may appeal to the general quarter sessions next after the expiration of twenty days from the time of the conviction; giving to the prosecutor six days' notice in writing of his intention of bringing and prosecuting such appeal and of the matter thereof, and entering into recognizance before a justice, with two sufficient sureties to be approved by the said justice on [*conviction*] (*a*) to appear and try such appeal at the session which shall be held next and immediately after the expiration of ten days from the time of such conviction, and to abide by the order or determination of such court, and for payment of such costs and charges as shall be awarded at the said court, and such appeal shall be at such sessions finally heard and determined. And if the conviction shall be there affirmed, the appellant shall pay to the prosecutor his full costs, to be ascertained by order of the said court.

On this clause it has been holden that if the defendant omit the giving notice, and enter an appeal, the sessions have no authority to adjourn such appeal until the next sessions, for the power of adjournment is only incident, when the sessions cannot conveniently hear the appeal after it has been duly entered. *R.* v. *the Justices of Oxfordshire*, 1 *M.* & *S.* 446.

In *R.* v. *Eaton*, 2 *T. R.* 89. 285. It was determined that to a *certiorari* to remove a conviction by a justice on stat. 16 *G.* 3. *c.* 30. a return that "the record is returned to the sessions, and that a copy is annexed to the writ," is sufficient.

In that case the court said that it was improper to sue out the *certiorari*; the defendant having appealed to the sessions had thereby made his election according to the terms of the act. But the court did not give any opinion on the effect of the 23d section of the act, whether or not that took away the *certiorari* in all cases, notwithstanding the sections 19, 20, and 21. Nor indeed was that question at all made.

By § 22. If any person, thinking himself aggrieved as aforesaid, shall have paid the penalty, or shall be then imprisoned, he may appeal against such conviction on entering into recognizance by himself only without surety, conditioned as before mentioned; the penalty remaining in the hands of such justice, or such person continuing in prison in the mean time, and until the merits of the appeal shall be finally determined.

§ 23. No conviction shall be set aside by the sessions for want of form, or for want of stating or through the mis-stating of any facts, circumstances, or matter whatsoever, in case the facts alleged in the conviction, or on which the same shall be grounded, shall be proved to the satisfaction of the court; but the appeal shall be decided on the merits of the case only.

(*a*) This word, as it seemeth, should be *condition*.

§ 25. Prosecutions on this act shall be commenced within twelve calendar months from the time of the offence committed, and not afterwards. 16 G. 3. c. 30. In what time prosecutions to commence.

By stat. 42 *G.* 3. *c.* 107. § 3. It is provided, that in case of non-payment of any pecuniary penalty or forfeiture imposed by *this* act, with the charges incident to the conviction, immediately on conviction, and for want of sufficient distress, the offender shall be sent by the convicting justice to the common gaol of the city or place where the offence was committed, for six months, unless the penalty and charges be sooner paid. 42 G. 3. c. 107.

§ 4. And if any person after having been duly convicted of any offence for which a pecuniary penalty is imposed either by 16 *G.* 3. or by this act, shall offend a second time by committing any offence against this act for which a pecuniary forfeiture is imposed, such second offence, whether it be the same offence as the first, or be any other of the said offences, shall be deemed a felon [*a felony*], and the person guilty thereof on conviction on indictment shall be transported for seven years. A second offence felony.

§ 5. And for the more ready conviction of persons for a second offence, the justice before whom he shall be convicted for the first offence against this act, (for which a pecuniary penalty is imposed), shall transmit the conviction under his hand and seal to the next sessions, to be there filed amongst the records; and such conviction so filed, or a true copy thereof, certified by the clerk of the peace, or proved to be a true copy, shall be sufficient evidence to prove the conviction for such first offence. Conviction for first offence to be sent to quarter sessions and be evidence.

§ VII. 1. (*b*) Destroying Covert for Deer.

By stat. 28 *G.* 2. *c.* 19. § 3. Whereas the burning and destroying of goss, furze, and fern in forests and chases, doth destroy the cover necessary for the preservation of the deer and game there, therefore if any person not having a right or legal licence to do the same, shall set fire to burn or destroy (or be aiding therein) any goss, furze, or fern, growing or being in any forest or chase, without the consent of the owner or person chiefly intrusted with the care and custody of such forest or chase, or of some part thereof, and being brought before a justice shall be thereof convicted by confession, or oath of one witness, or on view of the justice, he shall forfeit not exceeding *5l.* nor less than 40*s.*, half to the informer, and half to the poor of the parish; if not forthwith paid, to be levied by distress and sale; and if no sufficient distress can be found, the justice shall commit him to the common gaol for any time not exceeding three months, nor less than one month. 28 G. 2. c. 19.

§ VII. (2.) Of Hares.

It is to be remembered that I have already, under the third part of this title, treated of those particulars, which are common to this with other species of the game, as to destroying the same by unqualified persons; I here take notice of such things as belong to *hares* only, and which for the most part seem generally to concern all persons, whether qualified or not. (B.)

By stat. 14 & 15 *H.* 8. *c.* 10. No person of what estate, degree, or condition he be, shall trace, destroy, or kill any hare in the snow with any dog, bitch, bow, or otherwise. And the sessions or leet may inquire thereof; and after inquisition found, they 14 & 15 H. 8. c. 10. Tracing in the snow.

14 & 15 H. 8. c. 10. shall for every hare so killed, cess upon every offender 6*s*. 8*d*. to be forfeited to the king, if in the sessions, and to the lord of the leet, if in the leet.

1 J. 1. c. 27. And by stat. 1 *J*. 1. *c*. 27. Every person who shall trace or course any hares in the snow, shall on conviction before two justices, by confession, or oath of two witnesses, be committed to the common gaol, where the parties shall be apprehended, or offence committed, for three months, unless he pay to the churchwardens for the use of the poor 20*s*. for every hare which he shall take, kill, or willingly destroy; or after one month after his commitment become bound by recognizance with two sureties in 20*l*. a piece before two justices, that he shall not kill, take, or destroy any of the said games by any of the said means. Qu. *Whether this stat. be repealed by* 22 & 23 *C*. 2. *c*. 25.? *See* 7 *T. R.* 238.

Snares and harepipes. By the same act, every person who shall at any time take or destroy any hares with harepipes, cords, or any such instruments or other engines, shall forfeit for every hare 20*s*. in like manner.

48 G. 3. c. 93. But by stat. 48 *G*. 3. *c*. 93. § 1. This provision is repealed.

22 & 23 C. 2. c. 25. By stat. 22 & 23 *C*. 2. *c*. 25. § 6. If any person shall be found or apprehended setting or using any snares, harepipes, or other like engines, and shall be thereof convicted, by confession, or oath of one witness, before one justice, in one month after the offence, he shall give to the party injured such damages, and in such time, as the justice shall appoint, and shall over and above pay down presently to the overseers for the use of the poor, such sum not exceeding 10*s*. as the justice shall appoint; which, if he shall not do, the justice shall commit him to the house of correction for any time not exceeding one month.

9 Ann. c. 25. Killing hares in the night, or on Sunday, or Christmas-day. By stat. 9 *Ann*. *c*. 25. § 3. If any person whatsoever shall take, kill, or destroy any hare in the night time, he shall on conviction before one justice, on view, or on oath of one witness, forfeit 5*l*., half to the informer, and half to the poor, by distress and sale; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence, four months.

13 G. 3. c. 80. And by stat. 13 *G*. 3. *c*. 80. § 1. If any person shall knowingly and wilfully kill, take, or destroy any hare, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy any hare in the night, that is to say, between the hours of seven at night and six in the morning from the 12th day of *October* to the 12th day of *February*, and between nine at night and four in the morning from the 12th day of *February* to the 12th day of *October*, every such person shall, on conviction on oath of one witness before one justice, forfeit for the first offence not exceeding 20*l*. nor less than 10*l*., and for the second offence not exceeding 30*l*. nor less than 20*l*.

§ 2. And the justice before whom any offender shall be convicted as aforesaid shall cause the conviction to be made out in the

Conviction. manner and form following:—*Be it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, A. B. *is convicted before me* ———, *one of his majesty's justices of the peace for the county of* ———, [specifying the offence, with the time and place where the same was committed, and also specifying that it was the first or second offence against this act, as the case shall be]. *Given under my hand and seal the day and year aforesaid.* Which conviction the said justice shall cause to be fairly wrote over on parchment, and returned to the next sessions, to be filed by the

clerk of the peace; who by § 3. shall upon application to him made, deliver copies thereof on payment of 1*s*. for each copy. 13 G. 3. c. 80.

If a second offence.

§ 1. But in case any information shall be made upon oath as aforesaid before a justice against an offender, and it shall appear that such offender hath already been convicted of a first and second offence against this act, in such case the justice shall commit him to the common gaol or house of correction till the next general quarter sessions, unless he shall have entered into recognizance with two sufficient sureties to appear at such sessions, then and there to be tried by indictment for the said offence; and such justice shall also bind over the informer to prosecute the said offender by indictment as aforesaid; and the justices at sessions shall direct the said indictment to be tried accordingly; and if upon such indictment the offender shall be convicted, he shall forfeit and pay in court the sum of 50*l*.; and if he shall neglect or refuse to pay the same, he shall be committed to the common gaol or house of correction for not less than six nor more than twelve calendar months, unless such penalty shall be sooner paid; and the said offender shall, if the justices think proper, be once publicly whipped for such offence at the expiration of such commitment, in the town or place where such gaol or house of correction shall be, between the hours of twelve and one in the day.

Application of the penalties.

§ 4. The said forfeitures for the first and second offence, and also for the third offence on conviction at the sessions, together with the costs and charges previous to and attending such conviction (to be ascertained by the justice before whom the offender shall be convicted) *shall be forthwith paid*, by the person convicted, half to the informer and half to the poor. And if such person shall refuse or neglect to pay the same, or to give security for the payment thereof, such justice shall by warrant under his hand and seal cause the same to be levied by distress and sale, together with all costs and charges attending such distress and sale: and the said justice *may order such offender to be detained in custody* (*a*) until return may conveniently be had to the warrant of distress, unless the party give sufficient security by recognizance or otherwise to the satisfaction of such justice for his appearance before the said justice on the day appointed for the return of the said warrant, not exceeding seven days from the taking such security: but if upon such return no sufficient distress can be had, the said justice shall commit the offender to the common gaol or house of correction for three calendar months, unless the forfeiture shall be sooner paid, or until such offender, thinking himself aggrieved by such conviction, shall give notice to the informer that he intends to appeal to the next sessions, and shall enter into a recognizance before a justice with two sufficient sureties conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such sessions; which notice shall not be less than 14 days before the trial of the appeal. And the justices at such sessions, on proof of such notice and recognizance, shall hear and finally determine the appeal in a summary way, and award costs to either party as they shall judge proper; and their determination shall be final.

Appeal.

(*a*) And the justice may do this by a parol order. *Still* v. *Walls and Harris*, 7 *East*, 533.

13 G.3. c.80. Wilfully killing game, &c. on Sunday.

§ 6. "If any person or persons shall, upon a *Sunday*, or on *Christmas-day*, in the day-time, knowingly and wilfully take, kill, or destroy any hare, pheasant, partridge, heath game, or moor game, or shall, upon a *Sunday*, or on a *Christmas-day*, use any gun, dog, net, or engine for taking, killing, or destroying any hare, pheasant, partridge, moor game, or heath game, every such person being convicted thereof, in the manner and form prescribed by this act, shall be subject to the like forfeitures and penalties as are hereinbefore enacted to be inflicted for other offences against this act."

Penalty.

How penalties recovered, &c.

§ 7. And if the offender dwell in another county than that in which the offence was committed, the justice before whom the information or indictment was made may direct his warrant of apprehension and distress and sale to any constable where the offence was committed, to be by him carried to a justice residing near where the offender dwells, to be signed by him on the back of the said warrant, on proof on oath of the hand-writing of the justice who first granted the warrant; which indorsement shall be sufficient authority for the constable of the place where he dwells, or where his goods and chattels or distress are, or for the constable who brings the warrant to be indorsed, to apprehend and convey the offender before the justice who first granted the warrant, or any other justice of that county where the offence was committed, or for such constable to levy the penalty by distress and sale; and also, in case where no sufficient distress can be had, to convey the offender before the justice who first granted the warrant of distress, or any other justice of that county where the offence was committed, to be dealt with according to law. And the justice who indorsed the warrant shall direct the constable or other person making the distress and sale to deliver over the money levied to the justice who first granted the warrant; and if such constable or other person shall neglect or refuse to pay such sum, or deliver over all proceedings upon such distress and sale or warrant of apprehension, the justice who first granted the warrant, or the justice who indorsed it, may commit him to the common gaol or house of correction for six months, or till the money shall be paid, and the proceedings delivered over to the justice who first granted the warrant.

Constable refusing to pay money.

Punishment.

§ 8. And no order made, or any other proceedings upon this act, shall be quashed for want of form, or removed by *certiorari* or other writ into any of the courts of record at *Westminster*.

Prosecutions to be within one month.

§ 9. Provided that no proceeding shall be upon this act, unless information on oath be made before a justice within one calendar month after the offence committed.

[*Note.* In respect to the third offence, here seems to be an inconsistency, The former part of the act says, if the offender shall not, upon conviction by indictment at the sessions, pay in the court the penalty of 50*l*., he shall be committed to the gaol or house of correction for not less than six months, nor more than twelve. — The latter part of the act says, the said penalty shall be levied by distress; and if no distress can be had, the offender shall be committed to the gaol or house of correction for *three* months; with power of appealing to the sessions then next following.]

1 J.1. c.27.

By stat. 1 *J.* 1. *c.* 27. § 4. Every person who shall sell or buy to

sell again any hare, shall, on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every hare 10*s.*, half to the poor, and half to him that will sue. **Buying and selling hares.**

By the Black Act, 9 *G.* 1. *c.* 22. if any person armed and disguised shall appear in any warren or place where hares are usually kept, or unlawfully rob any such warren, or (whether armed and disguised or not) shall forcibly rescue any person lawfully in custody for either of the said offences, or shall by gift or promise of money or other reward procure any to join with him in any such unlawful act, he shall be guilty of felony without benefit of clergy. **Taking hares in warrens.**

But now by stat. 4 *G.* 4. *c.* 54. § 1. so much of stat. 9 *G.* 1. *c.* 22. § 1. as excludes the benefit of clergy in the case of the unlawfully robbing any warren or place where *hares* are usually kept, or of the forcibly rescuing any person being lawfully in custody for the said offence, is repealed; and the punishment of such felony by transportation for seven years, or by imprisonment only, or by imprisonment with hard labour in the common gaol or house of correction for not exceeding three years, at discretion of the court, is substituted. See the § at length, *ante*, p. 612. **4 G. 4. c. 54**

An indictment will not lie for conspiring to commit a civil trespass upon property, by agreeing to go, and by going into, a preserve for hares, the property of another, for the purpose of snaring them; though it be alleged to be done in the night-time, and that the defendants were armed with offensive weapons for the purpose of opposing resistance to any endeavours to apprehend or obstruct them. *R.* v. *Turner and others*, 13 *East*, 228. **An indictment will not lie for conspiring to commit a civil trespass.**

§ VII. (3.) Conies.

By stat. 21 *Ed.* 1. *st.* 2. If any warrener shall find any trespassers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do flee, or defend themselves, although the warrener or his assistant do kill such offenders, they shall not be troubled upon the same. **21 E. 1. st. 2. Trespassers in warrens may be resisted.**

By stat. 1 *H.* 7. *c.* 7. When information shall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person suspected, he may make a warrant to bring such person before himself, or any other of the said counsel or justices; and if such person shall conceal the said hunting or any of his accomplices, it shall be felony; but if he confesseth, it shall be but trespass finable at the sessions. **1 H. 7. c. 7. Hunting in a warren by night or disguised.**

Stat. 3 *J.* 1. *c.* 13. § 2. Enacts, "that if any person shall in the night-time, or by day, wrongfully or unlawfully break or enter into any park impaled, or any other several grounds inclosed with wall, pale, or hedge, and used or kept for the keeping, breeding, &c. of any deer or conies; and wrongfully or unlawfully shall hunt, drive, or chase out, or take or kill any deer or conies within any such impaled park, &c. against the will of the owner or occupier, &c. of the same, not having lawful authority, &c.; and thereof shall be convicted at the suit of the king or the party grieved, he shall be imprisoned three months, and pay to the party grieved treble damages and costs, &c., and find sureties for good behaviour for seven years, or continue in prison till he does." But this extends not to any grounds to be inclosed and used for conies after **3 J. 1. c. 13. Hunting by night in a warren inclosed.**

3 J. 1. c. 13. the making of the act, without the king's licence. Nor by § 8. to the hunting, chasing, or killing any deer or conies in the *day-time:* which contradictory provision is noticed by the stat. 7 *Jac.* 1. *c.* 13. and repealed as to deer, but preserved as to conies.

22 & 23 C. 2. c. 25. The stat. 22 & 23 *Car.* 2. *c.* 25. § 4. Enlarges the description of the offence to "warrens or grounds lawfully used or kept for the breeding or keeping of conies, although the same be not inclosed;" and subjects the offender to punishment on summary conviction.

5 G. 3. c. 14. If by night, further penalty of transportation. The stat. 5 *G.* 3. *c.* 14. § 6. 8, 9. enacts, "That if any person shall wilfully and wrongfully in the night-time, enter into any warren or grounds lawfully used or kept for the breeding or keeping of conies, although the same be not inclosed, and shall then and there wilfully and wrongfully take or kill in the night-time any coney or conies against the will of the owner or occupier thereof, or shall be aiding or assisting therein; and shall be convicted of the same before justices of oyer and terminer or gaol delivery; every such offender so convicted, &c. shall and may be transported for seven years, or suffer such other lesser punishment by whipping, fine, or imprisonment, as the court before whom such person shall be tried shall award." Provided (§ 8.) that conies may be killed or taken, &c. in the day-time on the sea or river banks in the county of *Lincoln*, so far as the tide shall extend, or within one furlong of the said banks, &c.; and (by § 9.) the person taking them shall not be obliged to make satisfaction for damage done by such entry, unless the same shall exceed one shilling. The object of this exception was to prevent the destruction of the banks by the increase of conies.

Exception for killing conies in day-time on sea or river banks in Lincolnshire.

9 G. 1. c. 22. By stat. 9 *G.* 1. *c.* 22. See *tit.* Black Act, Vol. I. "If any person being armed and disguised (as before stated) shall appear in any warren or place where conies are usually kept, or unlawfully rob any such warren, &c. or (whether armed and disguised or not) shall rescue any person in custody for such offence, or procure any person to join him therein, he shall be guilty of felony without benefit of clergy.

4 G. 4. c. 54. But now by stat. 4 *G.* 4. *c.* 54. § 1. this punishment has been repealed, and the same mitigated punishments substituted as in the case of hares; *ante*, p. 623.

22 & 23 C. 2. c. 25. Killing in the night on the borders of warrens. By stat. 22 & 23 *C.* 2. *c.* 25. § 5. No person shall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully used for the breeding or keeping of conies (except the owner or possessor of the ground, or persons employed by them,) on pain that the offender, on conviction in one month after the offence, before one justice, by confession or oath of one witness, shall give to the party injured such damages and in such time as shall be appointed by the justice, and over and above pay down presently to the overseers for the use of the poor, such sum not exceeding 10*s.* as the justice shall appoint, which if he shall not do, the justice shall commit him to the house of correction for such time as he shall think fit, not exceeding one month.

No action against owners of warrens for injury by conies. The statute saith, *upon the borders of warrens;* but if they are out of the warren, no person hath any property in them; and a man may justify killing them if they eat up his corn: but no action lies against the owner of the warren. 5 *Rep.* 104.

So a person that hath a right of common may kill them when they are out of the warren, and destroy the common; but he cannot have an action on the case against the lord, for that would

be to create a multiplicity of actions. *Cro. Eliz.* 548. *Cro. Jac.* 195. *Cro. Car.* 388. 22 & 23 C. 2. c. 25.

For a man cannot have an action for another man's conies breaking into his ground, because they are no longer the other's, than while they are in the warren or place where he hath a right to keep them; so that no violation hereby arises to the property of one man by the beasts of another; but the conies, being in their natural liberty, may be lawfully killed by the owner of the soil. 3 *Bac. Abr.* 326.

But if the lord hath a right to put conies upon the common, and by an excess in the number surcharges the common, and by the number of burrows made by the conies prevents the commoners' cattle from depasturing the common; an action in such case is the proper remedy, and the tenant may not of his own accord fill up the burrows and remove the nuisance. As in the case of *Cooper* v. *Marshall*, 1 *Burr.* 259.—By Ld. *Mansfield* Ch. J. The question in this case is not, whether the act of the lord be or be not hurtful, or how far it may be so: but the question turns upon the remedy, whether it is abateable, whether the commoner can do himself justice? It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abateable. The lord by his grant of common gives every thing incident to the enjoyment of it, as ingress, egress, and the like; and thereby authorizes the commoner to remove every obstruction to his cattle's grazing the grass which grows upon such a spot of ground; because every such obstruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoners' cattle out, is inconsistent with a grant which gives them a right to come in. But the lord still remains owner of the soil; and is not debarred from exercising any act of ownership. The commoner has no right to meddle with the soil. In the present case, the lord has done nothing contrary to the grant. He hath not obstructed the commoner from entering and putting in his cattle. The lord has a right to put conies upon the common. The conies themselves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord surcharges, the commoner is injured in his right of common, it is true; But what is the commoner's remedy? Not to abate; not to be his own judge, in a complicated question, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right so far, but no farther. Yet the commoner cannot destroy or drive off the conies; nor consequently, can he destroy the burrows, which is in effect destroying the conies.

By stat. 22 & 23 *C.* 2. *c.* 25. § 6. If any person shall be found or apprehended setting or using any snares or other like engines for taking of conies, and shall be thereof in like manner convicted, he shall give to the party grieved such damages and in such time as the justice shall appoint, and pay down presently to the overseer for the use of the poor such sum not exceeding 10*s.* as the justice shall appoint; which, if he shall not do, the justice shall commit him to the house of correction for any time not exceeding one month. 22 & 23 C. 2. c. 25. § 6. Setting snares.

§ 9. Persons aggrieved by any judgment given by virtue of this act may appeal to the next sessions, whose order therein shall be final, if no title to any land or royalty be therein concerned. Appeal.

3 J. 1. c. 13. Using gun, &c. to kill conies; keeping ferrets or coney dogs.

By stat. 3 *J.* 1. *c.* 13. § 5. If any person not having manors, lands, tenements, or hereditaments of a clear 40*l.* a-year, or not worth in goods 200*l.*, shall use any gun or bow to kill conies, or shall keep any ferrets or coney dogs, (except he have grounds inclosed within wall or hedge for keeping of conies, the increasing of which shall amount to a clear 40*s.* a-year to be let, and except keepers or warreners in their parks, warrens, or grounds); in such case, any person having a clear 100*l.* a-year in fee simple, fee tail, or for life, in his own right or the right of his wife, may seize the same to his own use.

52 G. 3. c. 93.

By stat 52 *G.* 3. *c.* 93. The necessity for taking out a certificate to kill game, is now extended to killing conies, with certain exceptions. Vide *ante*, p. 598.

§ VIII. Laws concerning the winged Game in particular.

[And herein that which is, strictly speaking, Game, is not the sole subject of consideration.]

(1.) *Of hawks and hawking.*

[34 Ed. 3. c. 22. — 37 Ed. 3. c. 19 — 11 H. 7. c. 17. — 5 El. c. 21. — 23 El. c. 10.]

(2.) *Of swans.*

[22 Ed. 4. c. 6. — 11 H. 7. c. 17. — 1 J. 1. c. 27.

(3.) *Of partridges and pheasants.*

[11 H. 7. c. 17. — 23 El. c. 10. — 1 J. 1. c. 27. — 7 J. 1. c. 11. — 9 An. c. 25. — 2 G. 3. c. 19. — 13 G. 3. c. 80. — 39 G. 3. c. 34.

(4.) *Of pigeons.*

[1 J. 1. c. 27. — 2 G. 3. c. 29.]

(5.) *Of wild ducks, wild geese, and other water-fowl.*

[25 H. 8. c. 11. — 1 J. 1. c. 27. — 9 An. c. 25. — 10 G. 2. c. 32.]

(6.) *Of heath-fowl, grouse, and bustards.*

[1 J. 1. c. 27. — 4 & 5 W. 3. c. 23. — 5 An. c. 14. — 9 An. c. 25. — 13 G. 1. c. 80. — 13 G. 3. c. 55. — 43 *G.* 3. c. 112. — 50 G. 3. c. 67.]

(7.) *Of herons.*

[19 H. 7. c. 11. — 25 H. 8. c. 11. — 1 J. 1. c. 27.]

(8.) *Of other wild fowl.*

[25 H. 8. c. 11.]

§ VIII. (1.) Of Hawks and hawking.

What hawks a man shall bear.

By stat. 11 *H.* 7. *c.* 17. No man shall bear any hawk of the breed of *England*, called a nyesse, goshawk, tassel, laner, laneret, or

faulcon, on pain of forfeiting his hawk to the king. And if he bring any of them over sea, he shall bring a certificate thereof from the officer of the port; on the like pain of forfeiting the same to the king. And the person that bringeth any such hawk to the king shall have a reasonable reward of the king, or else the hawk for his labour. 11 H. 7. c. 17.

By stat. 34 *Ed.* 3. *c.* 22. Every person who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is lost, shall presently bring the same to the sheriff; and the sheriff shall make proclamation in all the good towns in the county that he hath such an hawk in his custody; and if he is challenged in four months, the owner shall have him again, paying the costs; if he is not challenged in four months, the sheriff shall have him, making gree to him that took him, if he be a simple man; but if he be a gentleman, and of estate to have the hawk, then the sheriff shall re-deliver to him the hawk, taking of him reasonable costs for the time that he had him in his custody. 34 Ed. 3. c. 22. Person finding a hawk.

And by stat. 37 *Ed.* 3. *c.* 19. If any man steal any hawk, and the same carry away, not doing the ordinance aforesaid, it shall be done of him as of a thief that stealeth a horse or other thing, 37 *Ed.* 3. *c.* 19. That is, he shall be guilty of felony, but shall have his clergy. 3 *Inst.* 98. 37 Ed. 3. c. 19. Stealing a hawk.

By stat. 5 *Eliz.* *c.* 21. § 3. If any person shall take away any hawk or hawks or their eggs by any means unlawfully out of the woods or ground of any person, and be thereof convicted at the assizes or sessions on indictment, bill, or information, at the suit of the king, or of the party, he shall be imprisoned three months, and shall pay treble damages; and after the three months expired, shall find sureties for his good abearing for seven years, or remain in prison till he doth find such during the said time of 7 years. 5 El. c. 21. Taking hawks or eggs out of the woods.

But by stat. 11 *H.* 7. *c.* 17. No man shall take any ayre, faulcon, goshawk, tassel, laner, or laneret, in their warren, wood, or other place; nor purposely drive them out of their coverts accustomed to breed in, to cause them to go to other coverts to breed; nor slay them for any hurt done by them; on pain of 10*l.*, half to him that will sue before the justices of the peace, and half to the king. 11 H. 7. c. 17.

And no manner of person of what condition or degree he be, shall take or cause to be taken on his own ground or any other man's, the eggs of any faulcon, goshawk, or laner, out of the nest; on pain (being convicted thereof before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken.

By stat. 23 *Eliz.* *c.* 10. § 4. If any manner of person shall hawk in another man's corn, after it is eared, and whilst growing, and before it is shocked, and be convicted at the assizes, sessions, or leet, he shall forfeit 40*s.* to the owner; and if not paid in ten days, he shall be imprisoned for a month. 23 El. c. 10. Hawking in corn.

§ VIII. (2.) Of Swans.

A swan is a royal fowl; and all those the property whereof is not known, do belong to the king by his prerogative. *Case of Swans*, 7 *Rep.* 16.

By stat. 22 *Ed.* 4. *c.* 6. No person (other than the king's son) unless he have lands of freehold to the value of five marks a-year, 22 Ed. 4. c. 6. Qualification to keep swans.

22 Ed. 4. c. 6. shall have any mark or game of swans; on pain of forfeiting the swans, half to the king, and half to any person (so qualified) who shall seize the same.

Stealing swans marked. It is felony to take any swans that be lawfully marked though they be at large. *Dalt. c.* 156. See Vol. III. *tit.* Larceny, § I.

Swans unmarked. And as to swans unmarked; if they be domestical or tame, that is, kept in a moat, or in a pond near to a dwelling-house, to steal such is also felony. *Id.*

So it seemeth of swans unmarked, so long as they keep within a man's manor, or within his private rivers; or if they happen to escape from thence, and be pursued and taken, and brought in again. *Id.*

But if swans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost; and so long felony cannot be committed by taking them. *Id.*

And yet such unmarked and wild swans the king's officers may seize (being abroad) for the king's use by his prerogative. Also the king may grant them, and by consequence another may prescribe to have them, within a certain precinct or place. *Id.* 7 *Rep.* 18.

1 J. 1. c. 27. Swans' eggs. By stat. 1 *J.* 1. *c.* 27. § 2. Every person who shall take the eggs of any swans out of the nests, or willingly break or spoil them in the nests, and shall be convicted thereof before two justices by confession, or oath of two witnesses, shall be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20*s.* for every egg; or after one month of his commitment become bound by his recognizance with two sureties in 20*l.* a-piece, before two justices never to offend again in like manner: which recognizance shall be returned to the next sessions.

11 H. 7. c. 17. But by stat. 11 *H.* 7. *c.* 17. No person shall take or cause to be taken on his own ground or any other man's the eggs of any swan; on pain (on conviction before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the swan.

§ VIII. (3.) Of Partridges and Pheasants.

Partridges and pheasants are birds of warren, and the law seems peculiarly to protect them; as appears by what follows.

11 H. 7. c. 17. Taking them in another man's ground. By stat. 11 *H.* 7. *c.* 17. It is enacted, that no person of what condition he be, shall take or cause to be taken any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special license of the owner or possessioner of the same; on pain of 10*l.*, half to him that shall sue, and half to the owner or possessioner of the ground where they shall be taken.

1 J. 1. c. 27. Taking them with nets, dogs, or engines; or their eggs. By stat. 1 *J.* 1. *c.* 27. § 2. Every person who shall shoot at, kill, or destroy any pheasant or partridge with any gun or bow; or shall take, kill, or destroy them with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; or shall take their eggs out of the nests or spoil them in the nests, shall on conviction before two justices, by confession or oath of two witnesses be committed to gaol three months, unless he pay upon conviction to the churchwardens for the use of the poor 20*s.* for every pheasant, partridge, or egg; or after one month after his

commitment become bound by recognizance with two sureties before two justices in 20*l.* each, not to offend again in like manner. The recognizances to be returned to the next sessions. 1 J.1. c.27.

And by stat. 7 *J.* 1. *c.* 11. Every person who shall take, kill, or destroy any pheasant or partridge, with setting dogs and nets, or otherwise with any manner of nets, snares, or engines, shall on conviction before two justices, by confession or oath of one witness, be committed to the common gaol where the offence shall be committed or the party apprehended, for three months, unless he forthwith pay to the churchwardens or overseers 20*s.* for every pheasant or partridge; and further shall become bound by recognizance of 20*l.* before one justice that he shall not thereafter take, kill, or destroy any pheasant or partridge. The recognizance to be filed at the next sessions. 7 J.1. c.11.

By stat. 1 *J.* 1. *c.* 27. § 4. Every person who shall sell or buy to sell again any partridge or pheasant (except they be reared and brought up in houses, or brought from beyond sea;) shall on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every partridge 10*s.* and for every pheasant 20*s.*; half to him that will sue, and half to the poor. 1 J.1. c.27. Selling or buying.

By stat. 23 *El.* *c.* 10. § 1. If any person, of what estate, degree, or condition soever, shall take, kill, or destroy any pheasants or partridges in the night-time, and be thereof convicted at the assizes, sessions, or leet, he shall forfeit for every pheasant 20*s.*, and for every partridge 10*s.*, half to him that shall sue, and half to the lord of the liberty, lordship, or manor, unless such lord shall license or procure the said taking or killing, in which case the said half shall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days next after conviction, he shall be imprisoned for one month: and moreover, besides such forfeiture or imprisonment, he shall give bond to some justice of the peace, with good sureties, for the space of two years, not to take, kill, or destroy any partridges or pheasants contrary to the true meaning of this act. 23 El. c.10. Taking in the night.

By stat. 9 *Ann.* *c.* 25. § 3. If any person whatsoever shall take, kill, or destroy any pheasant or partridge in the night-time, he shall, on conviction before one justice, on oath of one witness, forfeit 5*l.*, half to the informer, and half to the poor, by distress; for want of distress to be sent to the house of correction for three months for the first offence, and for every other offence four months. 9 Ann. c.25.

And by stat. 13 *G.* 3. *c.* 80. § 1. If any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy any pheasant or partridge in the night, that is, between the hours of *seven* at night and *six* in the morning, from the 12th day of *October* to the 12th day of *February*, and between the hours of *nine* at night and *four* in the morning, from the 12th day of *February* to the 12th day of *October*, [or in the day-time, on a *Sunday* or *Christmas-day*,] he shall forfeit for the first offence not exceeding 20*l.*, nor less than 10*l.*; for the second offence not exceeding 30*l.*, nor less than 20*l.*; for the third and every other subsequent offence, 50*l.* To be levied and recovered as the like penalties for killing any hare in the night, or on a *Sunday* or *Christmas-day*, as is before set forth. Vide *ante*, § VII. 2. (*Hares*), p. 622. 13 G. 3. c.80. Or on a Sunday or Christmas-day.

7 J. 1. c. 11. At what time hawking at them shall be prohibited.

By stat. 7 *J.* 1. *c.* 11. § 2. Every person whatsoever, who shall hawk at, destroy, or kill any pheasant or partridge with any kind of hawk, or dog, by colour of hawking, between the first of *July* and the last of *August*, shall, on conviction before two justices, by confession or oath of two witnesses, in six months after the offence, be committed to gaol for one month, unless he pay upon conviction to the churchwardens or overseers, for the use of the poor, 40*s.* for every such hawking at any pheasant or partridge, and 20*s.* for every such pheasant or partridge which he, his hawk, or dog, shall take or kill.

2 G. 3. c. 19. Within what times taking them in any kind shall be prohibited.

Finally, by stat. 2 *G.* 3. *c.* 19. § 1, 2. 4. No person shall, upon any pretence whatsoever, take, kill, destroy, carry, sell, buy, or have in his possession or use any partridge between [1st of *February* and 1st *September*, 39 *G.* 3. *c.* 34. § 3.], or any pheasant between *February* 1st and *October* 1st, yearly, on pain of forfeiting, on conviction by one witness, in any of the courts of record at *Westminster*, 5*l.* for every such partridge or pheasant, with full costs. But this not to extend to any pheasant taken in the season allowed by this act, and kept in any mew or breeding place.

Prosecutions under this act to be commenced within six months.

Stealing pheasants.

J. Rough being convicted on an indictment for stealing a pheasant, value 40*s.*, of the goods and chattels of *H. S.*, all the judges, on a second conference in *Easter* Term 1779, after much debate and difference of opinion, agreed that the conviction was bad; for in cases of larceny of animals *feræ naturæ* the indictment must shew that they were either dead, tame, or confined; otherwise they must be presumed to be in their original state; and that it is not sufficient to add, " of the goods and chattels of" such an one. 2 *East's P. C.* 607.

[See *Jones*'s case, Vol. III. tit. Larceny, § I. p. 225.]

§ VIII. (4.) Of Pigeons.

Who may erect a dove-cote.

A lord of a manor may build a dove-cote upon his land, parcel of his manor; but a tenant of the manor cannot do it without licence. 3 *Salk.* 248. But any freeholder may build a dove-cote on his own ground. *Cro. Jac.* 382. 490.

Dove-cote not a nuisance.

And it hath been adjudged that erecting a dove-house is not a common nuisance, nor presentable in the leet. *Cro. Jac.* 490, 1.

1 J. 1. c. 27. Killing with dogs, nets, or engines.

By stat. 1 *J.* 1. *c.* 27. § 2. Every person who shall shoot at, kill, or destroy any house-dove, or pigeon, with any gun or bow, or shall take, kill, or destroy the same with setting-dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever, shall, on conviction before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol for three months, unless he pay to the churchwardens, for the use of the poor of the parish where the offence was committed or the offender apprehended respectively, 20*s.* for every pigeon, or after one month after his commitment become bound by recognizance with two sureties, before two justices, in 20*l.* a-piece, not to offend again in like manner. The recognizance to be returned to the next sessions.

2 G. 3. c. 29. Wilfully shooting at, or destroying any

By stat. 2 *G.* 3. *c.* 29. § 1. " If any person or persons shall shoot at, with an intent to kill, or shall, by any means whatever, kill or take, with a wilful intent to destroy, any house-dove or pigeon, and shall be thereof convicted by the confession of the party of-

fending, or the oath of one or more credible witness or witnesses, before one or more justice or justices of the peace of the county, city, town corporate, division, riding, or place, (which oath such justice or justices are hereby authorized to administer,) wherein any such offence or offences shall be committed, or the party or parties offending shall be apprehended, every person so offending, and who shall be convicted as aforesaid of any such offence, shall, for every such offence, forfeit and pay the sum of 20*s.* to the person or persons who shall inform against and prosecute to conviction any such offender or offenders; and in case the money so forfeited shall not be forthwith paid on every such conviction, it shall and may be lawful for such justice or justices to commit any such offender or offenders, who shall be so convicted as aforesaid, to the common gaol of the county, or the house of correction in the division or place where the party is convicted or apprehended, there to remain and be kept to hard labour for any time not exceeding three calendar months, nor less than one calendar month, as any such justice or justices shall order, unless the money forfeited shall be sooner paid." 2 G.3. c.29. — house-doves, &c. Penalty. Imprisonment.

But if the pigeons come upon my land, and I kill them, the owner hath no remedy against me; though I may be liable to the statutes which make it penal to destroy them. *Cro. Jac.*. 492. Pigeons trespassing.

Doves in a dove-house, young and old, shall go to the heir, and not the executor. 1 *Inst.* 8. Pigeons to go to the heir.

§ VIII. (5.) Of Wild Ducks, Wild Geese, and other Water-Fowl.

By stat. 1 *J.* 1. c. 27. § 2. Every person who shall shoot at, kill, or destroy with any gun, or bow, any mallard, duck, teal, or widgeon, and the same be proved by confession or oath of two witnesses, before two justices, shall be committed to gaol for three months, unless he pay to the churchwardens, for the use of the poor, 20*s.* for each fowl, or after one month after the commitment become bound by recognizance, with two sureties, before two justices, in 20*l.* each, not to offend again in like manner; which recognizance shall be returned to the next sessions. 1 J. 1. c. 27. Shooting water-fowl.

By stat. 25 *H.* 8. *c.* 11. No person between the last day of *May* and the last day of *August* yearly, shall take or cause to be taken any wild ducks, mallards, widgeons, teals, or wild geese, with nets or other engines, on pain of a year's imprisonment, and to forfeit for every fowl so taken 4d., half to the king, and half to him that will sue by action of debt: also the justices of the peace may enquire of, hear, and determine the same, as in cases of trespass. 25 H. 8. c. 11. Not to be taken in the moulting season.

Nevertheless any gentleman, or any other that may dispend 40*s.* a-year of freehold, may hunt and take such wild fowl with their spaniels only, without using a net or other engine except the long bow. *Id.*

But by stat. 9 *Ann. c.* 25. § 4. If any person whatsoever (between *June* 1. and *Oct.* 1. yearly, 10 *G.* 2. *c.* 32.) shall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water-fowl, in any place or resort for wild fowl in the moulting season, and shall be convicted thereof before one justice, by the oath of one witness, he shall for every such fowl so taken for- 9 Ann. c. 25. 10 G. 2. c. 32.

9 Ann. c. 25. feit 5*s.*, half to the informer, and half to the poor, by distress and sale, rendering the overplus, above the penalty and charge of distress; for want of distress, to be committed to the house of correction, not exceeding one month nor less than 14 days, to be whipped and kept to hard labour; and the nets to be seized and destroyed in the presence of the justice.

25 H. 8. c. 11. Destroying their eggs. By stat. 25 *H.* 8. *c.* 11. § 5. No person from *March* 31. to *June* 30. yearly, shall take or destroy the eggs of any mallard, teal, or other water-fowl, on pain of a year's imprisonment, and of forfeiting for every egg one penny, half to the king, and half to him that will sue by action of debt; or the justices of the peace may determine the same as in cases of trespass.

§ VIII. (6.) Of Heath Fowl, Grouse, and Bustards.

1 J. 1. c. 27. Shooting. By stat. 1 *J.* 1. *c.* 27. § 2. Every person who shall shoot at, kill, or destroy with any gun or bow any grouse, heath-cock, or moor game, shall on conviction before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol for three months, unless upon conviction he pay to the churchwardens, for the use of the poor where the offence was committed or the offender apprehended, 20*s.* for every fowl, or after one month after his commitment become bound by recognizance, with two sureties in 20*l.* each, before two justices, not to offend again in like manner; the recognizance to be returned to the next sessions.

13 G. 3. c. 55. Within what times only to be killed. By stat. 13 *G.* 3. *c.* 55. § 1, 2. 4. No person shall, upon any pretence whatsoever, wilfully take, kill, destroy, carry, sell, buy, or have in his possession or use, any heath-fowl commonly called *Black game*, between *Dec.* 10. and *Aug.* 20.; nor any grouse, commonly called *Red game*, between *Dec.* 10 and *Aug.* 12.; nor any *bustard*, between *Mar.* 1. and *Sept.* 1. in any year, on pain of forfeiting, for the first offence any sum not exceeding 20*l.* nor less than 10*l.*; and for the second and every subsequent offence, not exceeding 30*l.* nor less than 20*l.*; half to the informer, and half to the poor.

Penalties how to be recovered. § 3, 4. 9. To be recovered in any of H. M.'s courts of record at *Westminster*, on prosecution within six calendar months after the offence committed. Or the same may be recovered before one justice, information on oath being made before him within three calendar months after the offence committed; which said justice may convict the offender by confession or oath of one witness; and on neglect or refusal to pay, shall levy the same by distress and sale, together with all costs and charges attending the same, rendering the overplus. And such justice may order the offender to be detained in safe custody until return may conveniently be had to the warrant of distress, unless the said offender shall give security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him on the day appointed for the return of the warrant of distress, such day not exceeding five days from the time of taking such security. And if no sufficient distress can be had, such justice shall commit the offender to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding six nor less than three calendar months, un-

less the forfeiture and all costs and charges attending the prosecution be sooner paid and discharged. 13 G.3. c.55.

§ 6, 7. And the conviction shall be drawn up in this or the like form;—*Be it remembered, that on the —— day of —— in the year of our Lord ——— A.B. having appeared before me ——— one of H. M.'s justices of the peace for the county of ——— and due proof having been made upon oath by one or more credible witness or witnesses, or by confession of the party* [as the case may be] *is convicted of* [specifying the offence, with the time and place where the same was committed, and also specifying, if known, that it is the first, second, or any subsequent offence against this act, as the case shall be]. *Given under my hand and seal, the day and year aforesaid.* Which conviction the justice shall cause to be written on parchment, and returned to the next sessions, there to be filed and kept amongst the records. And the clerk of the peace shall grant copies thereof, on payment of 1*s*. for each copy. Conviction.

§ 10. If any person shall think himself aggrieved, he may appeal to any general quarter sessions to be holden within four calendar months after the cause of complaint shall arise, giving fourteen days' notice in writing to the justice, and to every other person against whom complaint shall be made; and in four days after such notice, entering into a recognizance before a justice with one sufficient surety, conditioned to try the appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such sessions. And the justice having received notice of appeal shall return all proceedings had before him, touching the matter of the said appeal, to the justices at such sessions. And the said justices upon proof of the notice given, and of the entering into such recognizance, shall determine the appeal in a summary way, and award costs to either party, to be levied and recovered as herein before-mentioned for the recovery of penalties and forfeitures under this act. And none of the proceedings shall be quashed for want of form, nor removed by *certiorari* or other process into any of the courts at *Westminster*. Appeal.

By stat. 9 *An*. *c*.25. If any person whatsoever shall take or kill any moor, heath-game, or grouse in the night-time, he shall, on conviction, before one justice, on the oath of one witness, forfeit 5*l*., half to the informer, and half to the poor, by distress and sale; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months. 9 Ann. c.25. Killing in the night.

And by stat. 13 *G*. 3. *c*.80. If any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy, any moor-game or heath-game, in the night, *viz*. between the hours of seven at night and six in the morning from the 12th day of *Oct*. to the 12th day of *Feb*., and between the hours of nine at night and four in the morning from the 12th day of *Feb*. to the 12th day of *Oct*. [or, in the day-time on a *Sunday* or *Christmas-day*]; he shall forfeit for the first offence not exceeding 20*l*. nor less than 10*l*.; for the second offence not exceeding 30*l*. nor less than 20*l*.; for the third and every other subsequent offence, 50*l*. To be levied and recovered as the like penalties for killing any hare in the night, or on a *Sunday* or *Christmas-day*, [as is before set forth.] Vide *ante*, § VII. 2. (*Hares*) p. 622. 13 G.3. c. 80. Killing in the night, or on Sunday or Christmas-day. Vide ante, Hares.

50 G.3. c.67. Heath-fowl in Somerset and Devon.

By stat. 50 *G.3. c.*67. It is enacted, that no person shall on any pretence whatever take, kill, or destroy, or attempt to take, kill, or destroy, in the counties of *Somerset* and *Devon*, any heath-fowl, commonly called *Black game*, between the 10th of *December* and the 1st of *September* in any year, and every person shall for every heath-fowl so taken, killed, or destroyed, and for every attempt to kill, take, and destroy such heath-fowl contrary to the true intent of this act, be liable to the same forfeitures and penalties, to be recovered in the same manner and subject to the like appeal, and the same provisions in every respect whatever as by the 13 *G.*3. *c.*55. are enacted in respect of any offence committed against the said acts.

43 G.3. c.112. Black game in the New Forest.

And by stat. 43 *G.*3. *c.*112. Persons taking or killing in the *New Forest* any *Black game*, between *Dec.* 10. and *Sept.* 1. shall be liable to the forfeitures and penalties of stat. 13 *G.*3. *c.* 55.

4 & 5 W.3. c.23. Burning ling.

By stat. 4 & 5 *W.*3. *c.*23. § 11. For the better preserving the red and black game of grouse commonly called heath-cocks, or heath-polts, no persons whatsoever on any mountains, hills, heaths, moors, forests, chases, or other wastes, shall presume to burn, between *Feb.* 2. and *June* 24., any grig, ling, heath, furze, goss, or fern; on pain of being committed to the house of correction, for any time not exceeding one month, and not less than ten days, there to be whipped and kept to hard labour.

As here is no method of conviction directed for this offence, the justices of the peace seem to have no cognizance thereof; but the trial and conviction must be at the assizes, or in the courts at *Westminster.*

In stat. 5 *Ann. c.*14. There are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* forest, and other places in *Nottinghamshire*, which not being of general concern are here omitted.

§ VIII. (7.) Of Herons.

1 J.1. c.27. Shooting herons.

By stat. 1 *J.*1. *c.*27. § 2. Every person who shall shoot at, kill, or destroy any heron with gun or bow, shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless on conviction he pay to the churchwardens for the use of the poor 20*s.* for each heron, or after one month from his commitment become bound by recognizance with two sureties in 20*l.* each, before two justices, not to offend again in like manner: the recognizance to be returned to the next sessions.

19 H.7. c.11. None shall take but by hawking.

By stat. 19 *H.*7. *c.* 11. No person, without his own ground, shall slay, take, or cause to be taken, by means of craft or engine, any herons, unless it be with hawking, or with long bows; on pain of 6*s.* 8*d.* to him who shall sue by action of debt; or the sessions may call before them persons suspected, and examine them; and if found in default, may commit them till they have found surety for payment of the forfeiture to the king; and the justices shall have the tenth part of the forfeiture for their labour.

Young herons.

No person, without his own ground, shall take any young herons out of the nest; on pain of 10*s.* in like manner for every young heron. *Id.*

And by stat. 25 *H.* 8. *c.* 11. If any person from *March* 31, to *June* 30., shall take or destroy the eggs of any heron, he shall be imprisoned for a year, and forfeit for every egg, 8*d.*, half to the king, and half to him that will sue by action of debt, or before the justices of the peace. 25 H. 8. c. 11. Eggs.

§ VIII. (8.) Of other Wild Fowl.

In general; by stat. 25 *H.* 8. *c.* 11. no manner of person from the last day of *March* to the last day of *June* yearly shall by day or night take or destroy any eggs of any kind of wild fowl, from or in any nest or place, where they shall chance to be laid by any kind of the same wild fowl, on pain of imprisonment for a year, and to forfeit for every egg of a bustard 20*d.*, of a bittour or shovelard 8*d.*, and of other wild fowl (except crows, ravens, boscards, and other fowl not used to be eaten) 1*d.*; half to the king and half to him that will sue by action of debt. Also the justices of the peace may determine the same, as in cases of trespass. (*a*) 25 H. 8. c. 11.

A. Appointment (*b*) of a Gamekeeper to kill Game; on Stats. 22 & 23 *C.* 2. *c.* 25. § 2., 5 *Ann.* *c.* 14. § 4., and 48 *G.* 3. *c.* 93. [See the Gamekeeper's Certificate, according to Stat. 52 *G.* 3. *c.* 93. Sched. (N.) (A.) (B.) (C.) (D.) Vol. V. *tit.* Taxes (*Certificate.*)]. A.

I A. L. *esquire, lord of the manor of* ———, *in the county of* ———, *do hereby nominate, authorize, and appoint* A. G. *of* P.

(*a*) With regard to fowl not used to be eaten, together with certain other noxious animals, there were provisions made by an ancient statute, viz 8 *El.* c. 15. entitled, *An act for the preservation of graine*, which it were to be wished might be revived with a proper consideration of the difference of the value of money betwixt that time and the present; by which it was required that the churchwardens should levy by an assessment, and pay for the heads of every three old crowes, choughes, or rookes, 1*d.*; of sixe young crowes, choughes, or rookes, 1*d.*; and for every sixe egges of any of them, 1*d.*; for every 12 stares' heads, 1*d.*; for every heade of merten, hawks, fursekytte, moldkytte, busarde, chagge, carmeraunt, or ryngtale, 2*d.*; and for two egges of them, 1*d.*; for every iron or ospray's heade, 4*d.*; for the heade of every wood wall, pye, jay, raven, kyte, or king's fisher, 1*d.*; bulfynce, or other bird that devoureth the blowth of fruit, 1*d.*; for the heade of every fox or graye, 12*d.*; and for the heade of every fytchewe, pocate, wesel, stote, fayre, bade, or wilde cat, 1*d.*; for the heade of every otter or hedghogge, 2*d.*; for the heades of three rattes or 12 mise, 1*d.*; for the heade of every want or moldwarp, one halfpenny. 8 El. c. 15.

And by another ancient statute, 24 *H.* 8. *c.* 10. every township was required to keep a crow net, to destroy crows, rooks, and choughs. 24 H. 8. c. 10.

There is some shadow of these regulations still remaining in some parishes where they give a reward for destroying several of the abovesaid noxious fowl and vermin. These statutes were suffered to expire, probably because in a short time there would be no need of their continuance; but it might be convenient nevertheless to revive the like provisions from time to time; and amongst the rest of the ravenous tribe to set a price now at length upon the head of that distinguished fowl, for the sake of which most of the ancient laws concerning the waged game were enacted, and which it was felony to destroy. But now the current hath received a contrary direction; and the hawk himself destroys more game than gunpowder and hailshot which have usurped his empire.

(*b*) By stat. 55 *G.* 3. *c.* 184. this appointment must be on a 35*s.* stamp

in the county of ———, *yeoman* [or *gentleman*, as the case may be], *to be a gamekeeper of, in, and to my said manor, with full power, licence, and authority, within and upon my said manor, to kill any hare, pheasant, partridge, or any other game whatsoever, for my sole use and benefit* [or, *for the use and benefit of him the said* A. G. or, *for the use and benefit of* A. S. *of* ———, *in the county of* ———, as the case may be]; *and also to take and seize all such guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies; ferrets, trammels, lowbels, hays, or other nets, harepipes, snares, or other engines, for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of my said manor of* ——— *shall be used by any person or persons who by law are prohibited to keep or use the same. Given under my hand and seal, this* ——— *day of* ——— *in the* ——— *year, &c.*

Signed, sealed, and delivered in the presence of J. W.

A. a. A. a. Deputation of a Gamekeeper for preservation of the Game only.

TO all to whom these presents shall come, I, W. L. *&c. esquire, lord of the manor of* S. *in the county of* H. *send greeting: Know ye, that I, the said* W. L. *have appointed, constituted, and empowered and by these presents do appoint, constitute and empower* J. W. *to be gamekeeper of, in, and to my said manor of* S. *and all the royalties, rights, members, and appurtenances thereto belonging, during my pleasure, to keep and preserve the game within and upon the said manor, but not to kill, or in anywise to pursue or destroy the same; and for the purpose of enabling the said* J. W. *to preserve the game within the said manor, I do hereby give and grant unto him, during such my pleasure, full power and authority to seize and take all, and all manner of guns, greyhounds, setting-dogs, ferrets, trammels, low-bells, hays, or other nets, harepipes, snares, or other engines for taking conies, hares, pheasants, partridges, or other game, and all manner of fishing nets, angles, leashers, pitchers, and other instruments or engines for taking of fish used within the said manor, and the royalties, members, and precincts thereof, by any person or persons whomsoever prohibited by the laws of this realm, to use, employ, and keep the same, as any other gamekeeper may lawfully do. And further, I do hereby give and grant unto him the said* J. W. *during my pleasure, full power and authority to do all and every act and acts, thing and things, which by the laws of this realm are requisite and necessary for the preservation of the game within the said manor and premises, and for the discovery and conviction of offenders in the destruction and pursuit of the same, against the laws and statutes in that case made and provided. In witness whereof, I, the said* W. L. *have hereunto set my hand and seal this* ——— *day of* ——— *in the year, &c.*

Signed, sealed, and delivered in the presence of J. W.

B. Form of Information to be exhibited before two (*a*) Commissioners, or one Justice of the Peace, being a Commissioner, on stat. 52 *G.* 3. *c.* 93. Sch. L. Rule XI. (*ante*, p. 599, 600.) for not producing a Certificate on Demand, &c. [See also stat. 54 *G.* 3. *c.* 141.] B.

County of ——— to wit. } *THE information and complaint of* A. I., *labourer, made before us* [*two, three, or more*, as the case may be; or, if before one justice, say, "*before me one of his majesty's justices of the peace of and for the* (*county, riding, city, town*, &c. as the case may be,) *and also one of the commissioners*, &c.] *of the commissioners for executing an act made and passed in the* 52*d year of the reign of his late majesty king* George *the third, intituled* "*An act for granting to his majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes,*" *and the several other acts relating to the said duties of assessed taxes, appointed to act as such commissioners* [or, "*commissioner,*" if before one justice, he being a commissioner], *in the* [*district or division*, as the case may be,] *of* ———, *and on the* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the fourth, at the parish of* ——— *in the* [*district or division*, as the case may be,] *aforesaid, and in this county*, &c. *of* ———: *Who saith that* A. O. *of the parish and county aforesaid* ——— *heretofore, and within three calendar months next before the date of this information, to wit, on the* ——— *day of* ——— *at the parish of* ——— *in the county aforesaid, was discovered using a* [*dog, gun, net, or other engine*, as the case may be, describing the engine by name; but if for woodcocks or snipes, the use of nets or springes is exempted from the penalty,] *for the purpose of taking and killing* [*game, woodcock, snipe, quail, landrail*, or *conies*. If for conies, add after the word *there* "*in a certain warren called the* ———, *situate and being in the parish of* ———," or "*in a certain inclosed ground called the* ———, *situate and being in the said parish of* ———," or "*in certain lands situate and being in the said parish of* ———, *in the tenure of* A. T." (as the case may be); "*he the said* A. O. *then and there not being the proprietor or tenant of the said warren, nor doing the said act by the direction or command of the proprietor or tenant thereof*"] *there* [" or *taking or killing, or assisting in the taking and killing of game or woodcocks*, &c. *by means of a*" (mentioning the means used), as the case may require. If the offence be aiding and assisting another, the following should be inserted: "*the said act of aiding and assisting as aforesaid, and in the said act mentioned, being then and there done in the company or presence of one* A. G. *who did act therein by virtue of a deputation or appointment for the manor of* Dale, *granted by* C. D. *esq. and not in the company or presence, nor for the use of another person who had then duly obtained a certificate in his own right according to the directions of the said act, nor who therein did by virtue of such certificate then and there use his own dog*, (or *gun, net, or other engine*, naming the same as before directed,) *for the taking of*," (as before)], *by one* A. S.,

(*a*) One justice or commissioner is competent to receive the information by stat. 3 *G.* 4. c. 23. § 2. Vol. I. *tit.* Conviction.

he the said A. S. *then and there being* [*an assessor or collector of the said parish of* ———, *or a commissioner for the execution of the said act, passed in the 52d year aforesaid, acting for the said county of* Stafford, [or *riding, division, or place,* as the case may require], or *by* L. B. *lord or lady, or gamekeeper of the manor of*——, *in which the said* A. O. *then was,* or by any of the other persons enumerated in Rule XI., as the case may be], *and that the said* A. S. *then and there demanded and required from the said* A. O. *so using such dog* [*gun, net,* &c. as the fact is] *as aforesaid for the purpose aforesaid,* [or *taking or killing,* &c. as aforesaid,] *the production of a certificate issued to him for that purpose, and that the said* A. O. [if the party had taken out a certificate, then say, "*wilfully refused to produce, and did not produce*"] *did not produce any such certificate, and that no such certificate was produced to the said* A. *S.*; *and that thereupon the said* A. S. *having made such demand as aforesaid, and no such certificate being produced to him, the said* A. S. *then and there required the said* A. O. *forthwith to declare to him the said* A. S. *the Christian and surname, and place of residence of him the said* A. O., *and also the parish or place* (*if any*) *in which he the said* A. O. *had been assessed to the duties granted by the said act passed in the 52d year aforesaid. And that the said* A. O. *after such demand made,* [*and in default of the production of a certificate issued to him for the using such dog,* &c. (as the fact is), *as aforesaid, for the purpose aforesaid* [or *for the taking or killing,* or *the aiding and assisting in the taking or killing of such game,* &c. as the case may require], *then and there wilfully refused to give in to the said* A. S. *the christian and surname, and place of abode of him the said* A. O.] [or instead of the words included in brackets, say "*then and there produced to the said* A. S. *a false certificate or a fictitious certificate;* or *then and there gave to the said* —— *a false name, or a false place of residence, or a false place of assessment, or a fictitious name, or a fictitious place of residence, or a fictitious place of assessment,*" as the case may be], *contrary to the form of the statute in that case made and provided; and by means of the premises, and by force of the statute in that case made and provided, the said* A. O. *hath forfeited for his said offence the sum of 20l. Whereupon the said* A. I. *prays the judgment of us the said commissioners* [or "*me the said justice and commissioner,*" as the case may require] *in the premises, and that the said* A. O. *may be summoned to answer the premises before us the commissioners aforesaid,* [or "*me the said justice and commissioner,*" as the case may require].

Exhibited before us this ——— *day of* ———,
in the year of our Lord 18—. A. I.

C. C. Form of Information to be exhibited before two Commissioners, or one Justice of the Peace, being a Commissioner, on stat. 52 *G.* 3. *c.* 93. Sch. L. Rule XII. (*ante,* p. 600.) for using a Dog, Net, Gun, &c. without having taken out a Certificate.

County of ——— to wit. } *THE information and complaint of* A. I. *labourer, made before us, two* [*three, or more,* as the case may be; or if before one justice (*a*) say, "*before*

(*a*) One justice or commissioner is competent to receive the information by stat. 3 *G.* 4. *c.* 23. § 2.

me, one] *of his majesty's justices of the peace of and for the county*, &c. (as the case may be) *and also one of the commissioners*, &c.] *of the commissioners for executing an act made and passed in the fifty-second year of the reign of his late majesty* G.3. *intituled* "*An act for granting to his majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes*," *and the several other acts relating to the said duties of assessed taxes, appointed to act as such commissioners* [or "*commissioner*," if before one justice, he being a commissioner], *in the* [*district* or *division*, as the case may be] *of* ——, *on the* —— *day of* —— *in the* —— *year of the reign of our sovereign lord* George *the fourth, at the parish of* —— *in the* [*district* or *division*, as the case may be] *aforesaid, and in this* [*riding, city, town*, &c. as the case may be, or] *county of* Stafford: *Who saith, that* A. O. *of the parish and county aforesaid* —— *heretofore, and within three calendar months next before the date of this information, to wit, on the* —— *day of* ——, *at the parish of* —— *in the county aforesaid, did use a* [*dog, gun, net, or other engine*, as the case may be, describing the engine by name; but if for woodcocks or snipes, the use of nets or springes is exempted from the penalty] *for the purpose of taking and killing* [*game, woodcock, snipe, quail, or landrail, or conies.* If for conies, add after the word *there*, "*in a certain warren called the* ——, *situate and being in the parish of* ——," or "*in a certain inclosed ground called the* ——, *situate and being in the said parish of* ——," or "*in certain lands situate and being in the said parish of* ——, *in the tenure of* A. T." as the case may be; "*he the said* A. O. *then and there not being the proprietor or tenant of the said warren*, &c. *nor doing the said act by the direction or command of the proprietor or tenant thereof*"], *there*, [or *did take, or did kill, by means of a* (describing the means) *game* (or *woodcock*, &c.); if the offence be aiding and assisting another, the following should be inserted: "*did aid and assist in the taking*, (or *in the killing*, as the case may require) *by means of a* (describing the means) *game or woodcock*, &c.; *the said act of aiding and assisting as aforesaid, being then and there done in the company or presence of one* A. G. *who did act therein by virtue of a deputation or appointment for the manor of* Dale, *granted by* C. D. *esq. and not in the company or presence, nor for the use of another person who had then duly obtained a certificate in his own right, according to the directions of the said act, nor who therein did by virtue of such certificate, then and there use his own dog*, (or *gun, net, or other engine*, naming the same as before directed), *for the taking of* (as before)"] *without having obtained such certificate as is directed by the statute in that case made and provided, in order to an assessment for the year wherein the said* A. O. *did so use such* [*dog*, &c. as before; or *did so take game*, &c. or *did so kill game*, &c. or *did so assist in the taking* or *in the killing game*, &c. as before, and as the case may require], *contrary to the form of the statute in that case made and provided; and by means of the premises, and by force of the statute in that case made and provided, the said* A. O. *hath forfeited for his said offence the sum of* 20*l*. *Whereupon the said* A. I. *prayeth the judgment of us the said commissioners* [or "*me the said justice and commissioner*," as the case may require] *in the*

premises, and that the said A. O. *may be summoned to answer the premises before us the commissioners aforesaid.* A. I.

Exhibited before us the —— *day of* ——,
in the year of our Lord 18—,

D.

D. General Form of Summons.

To ——
of the parish of ——
in the county of ——.

County of —— } to wit. *WHEREAS information and complaint hath been made before us two* [describe the commissioners, or *one* commissioner being a justice, or one justice, as in the information] *of the commissioners for executing an act made and passed in the 52d year of the reign of his late majesty G. 3., intituled "An act for granting to his majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes," and also the several acts relating to the said duties of assessed taxes, appointed to act as such commissioners* [as before,] *in the* —— *of* ——, *that you on the* —— *day of* ——, *at the parish of* —— *in the said county, did* [here insert the whole of the information in the past tense.]

These are to require you the said A. O. *to appear before us at* —— *in the said county of* ——, *on the* —— *day of* —— *at the hour of* —— *in the* —— *noon of the same day* [*to answer to the said information and complaint, and to be further dealt with according to law*]: [if the summons is to a witness, omit the words in brackets, and introduce "*to give evidence touching the matters contained in the said information, on the part of the said* A. B. (*the informant*), or *of the said* A. O. *the defendant*," as the fact is.]

Given under our hands and seals, this —— *day of* ——, *in the year of our Lord* 18—.

E.

E. Conviction for killing Game without a lawful Certificate.

See stat. 52 *G.* 3. *c.* 93. *Sch.* L. *Rule* XV. *ante*, p. 603.

F.

F. Distress Warrant thereon.

County of ——, } to wit. } To the constable of —— in the said county.

WHEREAS A.O. *of* —— *in the said county,* [labourer, &c.] *is this day convicted before me* S. P. *esq.* [or *us*, &c.] *one of his majesty's justices of the peace in and for the said county,* [and, if it be so, also *one of the commissioners*, &c.] *upon the oath of* A. B. *a credible witness, for that he the said* A. O. *on the* —— *day of* —— *in the* —— *year of the reign of his majesty king* George *the* ——, &c. *at* —— *in the said county, did use a certain dog* [*net*, or *engine*, as the fact is] *for the taking or destruction of game, and did thereby and therewith take, kill, and destroy a hare* [or as the case may be], *without having such certificate as is re-*

quired by law for that purpose, whereby the said A. O. *hath forfeited the sum of* 20*l. These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods of him the said* A. O., *and if within the space of (four) days next after such distress by you taken, the said sum shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale you do pay the sum of* ——— *to* A. B. *of* ——— *in the said county, one of the collectors of assessed taxes for the parish of* ——— *aforesaid, for the use of his majesty; returning the overplus (if any) on demand unto him the said* A. O. *And if sufficient distress cannot be found of the goods of the said* A. O. *whereon to levy the said sum of* 20*l. that then you certify the same to me, together with the return of this precept. Given under my hand and seal, the* ——— *day of,* &c.

F. Indorsement of Costs on Warrant of Distress.

County of ——— } *I the within named justice of the peace and commissioner do hereby endorse and declare the sum of* ——— *to be the reasonable costs attending the information, conviction, and warrant of distress (as on the other side hereof expressed) settled by me to be levied by the said constable of* ——— *and paid to the said informer. Given under my hand the day and year last within written.*

J. P.

G. Commitment for want of Distress. G.

County of ——— to wit. } To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS A. O. *of* ——— *in the said county, labourer,* [&c.] *was on the* ——— *day of* ——— *in the* ——— *year of* ——— *convicted before* [as in the information], *upon the oath of* A. B. *a credible witness, for that he the said* A. O. *on the* ——— *day of* ——— *in the year aforesaid, at* ——— *in the said county, did use a certain dog,* [*net,* or *engine,* as the fact is,] *for the taking or destruction of game, and did thereby and therewith take, kill, and destroy a hare* [or as the fact is], *without having such certificate as is required by law for that purpose, by virtue whereof he the said* A. O. *hath forfeited the sum of* 20*l.; and whereas on the said* ——— *day of* ——— *in the year aforesaid I did issue my warrant to the constable of* ——— *to levy the said sum of* 20*l. by distress and sale of the goods of him the said* A. O. *and to apply the same according to law; and whereas it duly appears to me, as well on the oath of the said constable, as otherwise, that he the said constable hath used his best endeavours to levy the said sum of* 20*l. on the goods of him the said* A. O. *as aforesaid, but that no sufficient distress can be had whereon to levy the same. These are therefore to command you the said constable of* ——— *aforesaid, to apprehend the body of the said* A. O. *and him safely to convey to the house of correction at* ——— *in the said county, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said house of correction to receive into your custody in the said house of correction the said* A. O., *and him*

there safely to keep for the space of six calendar months, unless such penalty shall be sooner paid; and for so doing this shall be your sufficient warrant. Given under my hand and seal the ——— *day of* ———, &c.

H. **H. Recognizance on Appeal against a Conviction for using a Gun, &c. to kill Game without having taken out a Certificate. Stat. 52 *G.* 3. *c.* 93. § 13. *Sch.* L. *ante*, p. 527, 528.**

[From *Y. C. P.* 99.]

County of ——— } *BE it remembered, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* A. O. *of* ——— *in the said county, gentleman,* (and if with sureties, add B. O. *of* ——— *yeoman, and* C. O. *of* ——— *grocer,* but the words of the act are "upon giving security," which expression seems to leave a discretionary power,) *came before* ——— (&c. &c. as the case may be,) *and acknowledged to owe to our said lord the king the sum of* ———, (&c. &c. as the case may be,) *of lawful money of* Great Britain, *to be levied of his* (or *their*) *goods and chattels, lands and tenements,* (respectively, if with sureties,) *to the use of our said lord the king, his heirs and successors, if the said* A. O. *shall make default in the condition hereunder written:—*

Whereas the above bound A. O. *has been this day duly convicted before me the said justice of the peace and commissioner,* (or *us, &c.* as the case may be,) *upon the oath of* A. W., *a credible witness, for that he the said* A. O., *on the* ——— *day of* ——— *last, at* ——— *in the parish of* ——— *in the said county, did use a certain dog called a greyhound,* (or as the case may be,) *for the taking or destruction of game, without having such certificate as is required by law for that purpose, whereby the said* A. O. *has forfeited the sum of twenty pounds* (if mitigated, say *which I* (or *we*) *have mitigated to ten pounds*)*: the condition of this recognisance is such, that if the above bound* A. O. *shall appear at the next general quarter sessions of peace, to be holden at* ——— *in and for the said county of* ———, *and shall then and there try such appeal and abide the judgement of the said court of quarter sessions, and pay the costs occasioned by such information, conviction, and appeal, as shall seem meet to and be awarded by the justices at such general quarter sessions, then this recognizance to be void, otherwise of force.*

Acknowledged before me (or *us*).

I. **I. Warrant to search for Dogs and Engines; on Stat. 22 & 23 *C.* 2. *c.* 25. § 2. *ante*, p. 566.**

County of ——— } To ——————.

WHEREAS complaint hath been made unto me J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. I. *of* ——— *in the said county, yeoman, that he*

the said A. I. *hath good ground to suspect and doth suspect that* A. O. *of* ——— *aforesaid, in the county aforesaid, yeoman, being a person in no respect qualified by the laws of this realm so to do, hath and keepeth in his custody a greyhound* [*gun, net,* &c.] *to kill, and destroy the game; These are therefore to command you in his majesty's name to enter into and search in the day-time the houses, out-houses, and other places of him the said* A. O. *at* ——— *aforesaid, and if you there find any greyhound,* &c. *that you seize and keep the same for the use of* A. L. *esquire, lord of the manor of* ———, *in which manor the said houses, out-houses, and other places are situate and do lie,* [or if net, gun, &c. *that you* cut in pieces or *destroy the same*]. *Given under my hand and seal the* —— *day of* —— *in the* —— *year,* &c.

N. B. Though this warrant is drawn in the terms of the act, a justice of peace will do well (except he has very strong grounds for extending it) to confine the search and cutting to hays, trammels, lowbels, harepipes, and snares.

K. Information against a Person for keeping and using Dogs, or Engines to destroy Game, not being qualified; on Stat. 5 *Ann.* c. 14. § 4. *ante*, p. 567. K.

County of ——— to wit. } *BE it remembered, that on the* ——— *day of* ——— *in the* ——— *year of our lord* ——— *at* —— *in the said county of* ——, A. I. *of* ——— *in the said county of* ———, *labourer, personally came before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county, and informed me that* A. O. *of the parish of* —— *in the said county, labourer, being a person not then having lands and tenements or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of one hundred pounds* per annum, *or for term of life, nor then having any lease or leases of ninety-nine years or for any longer term of the clear yearly value of one hundred and fifty pounds, nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren, being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of or to any lord or lady of any lordship, manor, or royalty, duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a gamekeeper to any manor, with authority as gamekeeper to kill game within any manor for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever duly qualified, empowered, or authorized by the laws of this realm either to take, kill, or destroy any sort of game whatsoever, either for himself or for any other person or persons whatsoever, or to keep or use any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engine for the destruction of the game of this kingdom, within three months now last past, that is to say, on the* ——— *day of* ——— *in the year aforesaid, at the parish of* ——— *in*

the said county of ——, *did unlawfully keep and use,* [or, "*keep*" or "*use*," as the case may be,] *a lurcher* (or as the case may be) *to kill and destroy the game, contrary to the form of the statute in that case made and provided: whereby he hath forfeited the sum of 5l.; and thereupon he the said* A. I. *prayeth the judgment of me the said justice in the premises, and that he may have one moiety of the said forfeiture according to the form of the statute in that case made, and that the said* A. O. *may be summoned to answer the premises before me the justice aforesaid.* A. I.

Taken before me J. P.

L.

L. Summons thereupon.

To the constable of —— in the county of ——.

County of —— to wit. } *WHEREAS information and complaint hath been made before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that* A. O. *of the parish of* —— *in the said county, labourer, being a person not then having lands and tenements, or any other estate of inheritance in his own right or in his wife's right, of the clear yearly value of one hundred pounds* per annum *or for term of life, nor then having lease or leases of ninety-nine years or for any longer term, of the clear yearly value of one hundred and fifty pounds, nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of or to any lord or lady of any lordship, manor, or royalty, duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game, or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a gamekeeper to any manor, with authority as gamekeeper to kill game within any such manor for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever duly qualified, empowered, or authorized by the laws of this realm, either to take, kill, or destroy any sort of game whatsoever, either for himself, or for any other person or persons whatsoever, nor to keep or use any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engine for the destruction of the game of this kingdom, within three months now last past, that is to say, on the* —— *day of* —— *in the year aforesaid, at the parish of* —— *in the said county of* ——, *did unlawfully keep and use* [or, "*keep*" or "*use*," as the case may be,] *a lurcher* (or as the case may be) *to kill and destroy the game, contrary to the form of the statute in that case made and provided: whereby he hath forfeited the sum of 5l., to be applied as the act directs. These are, therefore, to require you forthwith to summon the said* A. O. *to appear before me at* —— *in the said county, on* —— *the* —— *day of* —— *at the hour of* —— *in the* —— *noon, to answer to the said information and complaint, and to be further dealt with according to law; and be you then there, to certify what*

you shall have done in the execution hereof. Herein fail not. Given under my hand and seal this ——— day of ——— in the year of our Lord one thousand eight hundred and ———.

J. P. (L. S.)

M. Form of a Conviction on Stat. 5 *Anne, c.* 14. § 4. *ante,* p. 567., for keeping and using a Lurcher to kill and destroy the Game. M.

County [*or, as the case may be*] of ——— } *BE it remembered, that on the ——— day of ——— in the year of our Lord ———, at ——— in the county of ———,* A. I. *of ——— in the county of ——— labourer,* [or, as the case may be,] *personally came before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county of ———, and informed me that* A. O., *of ——— in the county of ——— labourer, being a person not then having lands and tenements, or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of one hundred pounds* per annum, *or for term of life, nor then having any lease or leases of ninety-nine years, or for any longer term, of the clear yearly value of one hundred and fifty pounds, nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren, being stocked with deer or conies, for his necessary use, in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of or to any lord or lady of any lordship, manor, or royalty, duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game, or any sort of game whatsoever, in or upon any lordship, manor, or royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor, to be a gamekeeper to any manor with authority as gamekeeper to kill game within any manor, for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever duly qualified, empowered, or authorised by the laws of this realm either to take, kill, or destroy any sort of game whatsoever either for himself or for any other person or persons whatsoever, nor to keep or use any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engine for the destruction of the game of this kingdom, within three months now last past, that is to say, on the ——— day of ——— in the year aforesaid, at the parish of ——— in the said county of ———, did unlawfully keep and use* [or, "*keep,*" or "*use,*" as the case may be,] *a lurcher, to kill and destroy the game, contrary to the form of the statute in such case made and provided: Whereupon the said* A. O., *after being duly summoned to answer the said charge, appeared before me on the ——— day of ——— in the said year ——— at ——— in the said county of ———, and having heard the charge contained in the said information, declared he was not guilty of the said offence;* [or, as the case may happen to be, *did not appear before me pursuant to the said summons* [or, *did neglect and refuse to make any defence against the said charge*]. *Nevertheless I, the said*

said justice, did proceed to examine into the truth of the charge contained in the said information; and on the said day of ——— *at* ——— *aforesaid, one credible witness, to wit,* A. W. *of* ——— *in the county of* ——— *upon his oath deposeth and saith,* [if *A. O.* be present, say, *in the presence and hearing of the said* A. O.] *that within three months now last past, to wit, on* ——— *the* ——— *day of* ——— *in the year* ——— *the said* A. O., *at the parish of* ——— *in the said county of* ——— *did* [here state the evidence in support of the charge, and as nearly as possible in the words used by the witness or witnesses]. *And further, that the said* A. O. *to the best of the knowledge and belief of him the said* A. W. *was not then, to wit, on the said* ——— *day of* ——— *aforesaid, in any manner whatsoever duly qualified, empowered, or authorized by the laws of this realm to take, kill, or destroy any sort of game either for himself or for any other person or persons whatsoever, or to keep or use a lurcher for that purpose;* [if more than one witness be examined, state the evidence given by each; or, if the defendant confess, instead of stating the evidence, say,] *and the said* A. O. *acknowledged and voluntarily confessed the same to be true. Therefore, it manifestly appearing to me that he the said* A. O. *is guilty of the offence charged upon him in the said information, I do hereby convict him of the offence aforesaid; and do declare and adjudge that he, the said* A. O., *hath forfeited the sum of five pounds of lawful money of* Great Britain, *for the offence aforesaid, to be distributed according to the form of the statute in that case made and provided. Given under my hand and seal the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

N. N. Warrant to distrain 5*l.* for keeping Dogs or Engines; on stat. 5 *Ann. c.* 14. § 4. *ante*, p. 567.

County of ——— To the constable of ———.

WHEREAS A. O. *of* ———, *in the said county, labourer,* [&c.] *is this day convicted before me,* J. P. *esquire, one of his majesty's justices of the peace, in and for the said county, upon the oath of* A. W. *a credible witness, for that he the said* A. O. *being a person not qualified by the laws of this realm so to do, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *did keep and use,* (or "*keep,*" or "*use,*") *in the parish of* ——— *aforesaid, in the county aforesaid, a certain dog called a greyhound to kill and destroy the game, by virtue whereof he the said* A. O. *hath forfeited the sum of* 5*l. to be distributed as hereinafter is mentioned; These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods of him the said* A. O. *and if within the space of* ——— (a) *days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale that you do pay one-half of the said sum of* 5*l. to* A. I. *of*

(*a*) Not less than four, nor more than eight days. 27 G. 2. c. 20. § 1.

——— *in the said county, yeoman, who informed me of the said offence, and the other half of the said sum of 5l. to the overseers of the poor of the parish of* ——— *aforesaid, where the said offence was committed, for the use of the poor of the said parish; returning the overplus on demand unto him the said* A. O., *the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods of the said* A. O. *whereon to levy the said sum of 5l. that then you certify the same to me, together with the return of this precept. Given under my hand and seal, the* ——— *day of* ——— *in the* ——— *year of* ———.

Constable's Return that no sufficient Distress can be obtained, indorsed on the Warrant.

L. M. *constable of* ——— *within mentioned, maketh oath this* ——— *day of* ——— *in the year within mentioned, that he hath made diligent search for, but doth not know of, nor can find sufficient goods and chattels of* A. O. *within mentioned, whereon to levy the within mentioned sum of 5l.* L. M.

Sworn before me the justice within mentioned.
R. B.

O. Commitment for want of Distress, for keeping Dogs or Engines; on Stat. 5 *Ann. c.* 14. § 4. *ante*, p. 567. O.

County of ——— } To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS A. O. *of* ——— *in the said county, labourer,* [&c.] *was on the* ——— *day of* ——— *in the* ——— *year of* ——— *duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A W. *a credible witness, for that he the said* A. O., *not being a person by the laws of this realm qualified so to do, on the* ——— *day of* ——— *in the year aforesaid, did keep and use,* (or "*keep*" or "*use,*") *in the parish of* ——— *aforesaid, in the county aforesaid, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said* A. O. *hath forfeited the sum of 5l.; and whereas on the said* ——— *day of* ——— *in the year aforesaid, I did issue my warrant to the constable of* ——— *to levy the said sum of 5l. by distress and sale of the goods of him the said* A. O., *and to distribute the same according as is directed by the statute in that behalf made: and whereas it duly appears to me, as well on the oath of the said constable as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods of the said* A. O. *as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of* ——— *aforesaid to apprehend the body of the said* A. O. *and him safely to convey to the house of correction at* ——— *in the said county, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said*

house of correction to receive into your custody in the said house of correction the said A. O., *and him there safely to keep for the space of three months; and for so doing this shall be your sufficient warrant. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year*, &c.

P. P. *Certiorari* Bond, on a Conviction for keeping Dogs or Engines; on Stat. 5 *Ann. c.* 14. § 2. *ante*, p. 578.

KNOW all men by these presents, &c. Whereas the above-bound A. O. *was lately convicted before* J. P. *esquire, one of his majesty's justices of the peace in and for the county of* ——— *aforesaid, of keeping and using at* ——— *aforesaid, in the said county, a greyhound, to kill and destroy the game; and whereas the said* A. O. *hath since his said conviction sued out his majesty's writ of* certiorari *to remove the same and the proceedings thereupon before the king himself wherever he shall be in* England *on* ——— [the day of the return of the certiorari]: *The condition of the above obligation is such, that if the above-bound* A. O. *do and shall (according to the true intent and meaning of the statute in that case made) well and truly pay to the said* A. I. *within* 14 *days after the said conviction shall be confirmed, or a* procedendo *granted thereupon, his full costs and charges which he shall sustain touching or concerning the said conviction and removal thereof by the said writ of* certiorari; *then the above-written obligation shall be void, otherwise of force.*

Q. Q. Warrant against an Innkeeper for having Game in his Possession; on Stat. 5 *Ann. c.* 14. § 2. *ante*, p. 592.

County of ———. To the constable of ———.

WHEREAS A. I. *of* ——— *hath this day made information and complaint upon oath before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, that on the* ——— *day of* ——— *now last past,* A. O. *of* ——— *in the parish of* ——— *in the county aforesaid, innkeeper at* ——— *aforesaid, in the parish and county aforesaid, in the house of him the said* A. O. *then and there had in his possession two partridges* [or, *did offer to sell two partridges*, or as the case shall be,] *he the said* A. O. *being a person not then having lands or tenements or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of* 100*l. per annum, or for term of life, nor then having lease or leases of* 99 *years, or for any longer term, of the clear yearly value of* 150*l., nor then being the son and heir apparent of an esquire, or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of any lord or lady of any lordship, manor, or royalty, duly made, constituted, or appointed by writing under his or her hand and seal, to take, kill, or*

destroy the game or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a game-keeper to any manor, with authority as gamekeeper to kill game within any manor for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever qualified or authorized to kill game, or to have the said two partridges in his custody or possession, against the form of the statute in that case made and provided; These are therefore to command you, to bring the said A. O. *before me or some other of his majesty's justices of the peace for the said county, to answer the premises, and to be further dealt with according to law. Given under my hand and seal, the —— day of —— in the —— year,* &c.

R. Conviction of an Innkeeper, for having two Partridges in his Custody and selling the same; on Stats. 5 *Ann. c.* 14. and 28 G. 2. *c.* 12. p. 592. R.

County of —— } *BE it remembered, that on the —— day of ——, in the —— year of our Lord ——, at* W. *in the county of ——,* A. I. *of* L. *in the county of —— esquire, personally came before me* J. P. *clerk, one of his majesty's justices of the peace for the said county of ——, and informed me that* A. O. *of —— in the county of ——, innkeeper, on the —— day of ——, at ——; in the said county of ——, being a person not then having lands or tenements or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of* 100*l.* per annum, *or for term of life, nor then having lease or leases of* 99 *years, or for any longer term, of the clear yearly value of* 150*l., nor then being the son or heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper to any lord or lady of any lordship, manor, or royalty duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a gamekeeper to any manor, with authority as gamekeeper to kill game within any manor for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever qualified or authorized to kill game, and being then and there an innkeeper, unlawfully had in his custody two partridges, and did then and there sell* (*or offer to sell*) (a) *the same partridges, contrary to the form of the statute in such case made and provided. Whereupon the said* A. O. *after being duly summoned to answer the said charge, appeared before me, on the —— of —— in the —— year of our Lord aforesaid, at* W. *in the said county of —— and having heard the charge contained in the said information, declared he was not guilty of the said offence. Whereupon I the said justice did proceed to*

(*a*) This should be stated according to the evidence. If the offender only had the birds in his custody, the in-

formation should be confined to that part; if he sold, omit the offer to *sale*; if he offered to sell, omit the allegation that he actually sold.

examine into the truth of the charge contained in the said information, and on the ——— day of ——— aforesaid, at the parish of ——— aforesaid, in the said county of ——— one credible witness, to wit, J. W. *of* H. *in the said county of ——— yeoman, upon his oath deposeth and saith, in the presence of the said* A. O., *that within three months next before the said information was made before me the said justice by the said* A. I., *to wit, on the ——— day of ——— in the year ———, at the parish of* M. *aforesaid, he the said* A. O. *being a person not then having lands, tenements, or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of* 100*l.* per annum, *or for term of life, nor then having lease or leases of* 99 *years, or for any longer term, of the clear yearly value of* 150*l. nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of any lord or lady of any lordship, manor, or royalty duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game or any sort of game whatsoever, in or upon any lordship, manor, or royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a gamekeeper to any manor, with authority as gamekeeper to kill game within any manor for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever qualified or authorized to kill game, and then and there being an innkeeper, unlawfully had in his custody two partridges, and did then and there sell* (or, *offer to sell*) *the same, contrary to the form of the statute in that case made and provided.* [State the evidence as nearly as possible in the words used by the witness, and if more than one witness be examined, state the evidence given by each.] *Therefore it manifestly appearing to me that he the said* A. O. *is guilty of the offence charged upon him in the said information, I do hereby convict him of the offence aforesaid, and do declare and adjudge that he the said* A. O. *hath forfeited the sum of ten pounds of lawful money of* Great Britain (*that is to say, the sum of five pounds for each of the said partridges,*) *for the offence aforesaid, to be distributed according to the form of the statute in that case made and provided.*

Given under my hand and seal this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

J. P. (L. S.)

Though stat. 5 *Ann. c.* 14. makes no distinction between those *innkeepers* who are qualified by estate and those who are not, it is more safe to allege want of qualification, unless the defendant actually sold the birds, or offered them to sale; in which case, as stat. 28 *G.* 2. *c.* 12. inflicts the penalty, whether the person be qualified or not, it may be proper to omit the whole of what is stated in the conviction respecting qualifications.

S. Warrant to levy 10*l.* on the Goods of an Innkeeper convicted of having Game in his Custody; on Stat. 5 *Ann. c.* 14. § 2. *ante*, p. 592. S.

County of ———} To the constable of ———

WHEREAS A. O. *of* ——— *in the parish of* ——— *in the county aforesaid, innkeeper, is on this present* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *duly convicted before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W. *a credible witness, for that he the said* A. O. *on the* ——— *day of* ——— *in the* ——— *year of* ——— *at the parish of* ——— *aforesaid, in the county aforesaid, had in his custody and possession two partridges, he the said* A. O. *being no way qualified by the laws of this realm to have the said two partridges in his custody or possession, against the form of the statute in that case made, by reason whereof he the said* A. O. *hath forfeited the sum of* 10*l. These are therefore to require you to levy the said sum of* 10*l. by distress of the goods of him the said* A. O.; *and if within the space of* ——— (a) *days next after such distress by you taken, the said sum of* 10*l. together with reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale that you do pay one half of the said sum of* 10*l. to* A. I. *of* ——— *yeoman, who informed me of the said offence, and the other half to the poor of the parish of* ——— *aforesaid, within which parish the said offence was committed; returning to him the said* A. O. *the overplus on demand; the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be had of the goods of the said* A. O. *that you certify the same to me, together with the return of this precept. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year of* ———.

T. Commitment on the same for want of Distress; on Stat. 5 *Ann. c.* 14. § 2. *ante*, p. 592. T.

County of ———} To the constable of ——— in the said county, and to the keeper of the house of correction at ———, in the said county.

WHEREAS A. O. *of* ——— *in the said county, innkeeper, was on the* ——— *day of* ——— *duly convicted before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W. *of* ———, *a credible witness, for that he the said* A. O. *on the* ——— *day of* ———, *in the* ——— *year of* ——— *at the parish of* ——— *aforesaid, in the county aforesaid, had in his custody and possession two partridges; he the said* A. O. *being no way qualified by the laws of this realm to*

(a) Not less than four, nor more that eight days. 27 G. 2. c. 10. § 1.

have the said two partridges in his custody or possession, against the form of the statute in that case made, by reason whereof he the said A. O. *hath forfeited the sum of* 10*l. And whereas on the said* ——— *day of* ——— *in the year aforesaid I. did issue my warrant to the constable of* ——— *to levy the said sum of* 10*l. by distress and sale of the goods of him the said* A.O. *and to distribute the same according as is directed by the said statute; and whereas it duly appears to me, as well on the oath of the said constable of* ——— *as otherwise, that he the said constable of* ——— *hath used his best endeavours to levy the said sum on the goods of the said* A. O. *as aforesaid, but that no sufficient distress can be found whereon to levy the same: These are therefore to require you the constable of* ——— *aforesaid to carry the said* A. O. *to the said house of correction at* ——— *aforesaid, and deliver him to the said keeper thereof together with this precept. And you the said keeper are hereby commanded to receive into your custody in the said house of correction him the said* A.O. *and him there safely to keep for the space of three months, without bail or mainprize; and for your so doing this shall be your sufficient warrant. Given under my hand and seal the* ——— *day of* ——— *in the year of our Lord* 18—.

U. U. Warrant to search for Venison or Engines; on Stat. 16 *G.* 3. *c.* 30. p. 614.

County of ———. } To the constable of ———

WHEREAS A. I. ——— *in the said county, yeoman, hath this day made oath before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, that there is reason to suspect that* A. O. *of* ——— *in the said county, tailor, hath in his custody or possession, or in his dwelling-house, out-house, yard, garden, or other place at* ——— *aforesaid, a deer, which hath been unlawfully killed, or the head, skin, or other part thereof, as also divers slips, nooses, toils, snares, and other engines or some of them for the unlawful taking of deer: These are therefore to require you, that you do forthwith search him the said* A. O. *and his said dwelling-house, out-house, garden, or place, at* ——— *aforesaid; and if on such search you shall find any deer suspected to have been unlawfully killed, or the head, skin, or other parts thereof, or any slip, noose, toil, snare, or other engine suspected to be used for the unlawful taking or killing of deer, that you bring the same and also him the said* A. O. *before me or some other of his majesty's justices of the peace for the said county, to be examined concerning the premises, and further dealt with according to law. Herein fail not. Given under my hand and seal the* ——— *day of* ——— *in the year* ———

N. B. Deer stealing in an inclosed ground, &c. is made felony, and punishable by transportation for seven years, by *stat.* 42 *G.* 3. *c.* 107. § 1. *ante*, p. 613.

W. Conviction of a Person for having in his Custody or Possession a Deer suspected to have been unlawfully killed; on Stat. 16 *G.* 3. *c.* 30. § 4., *ante*, p. 614. W.

County of ——— to wit. } *BE it remembered, that on the ——— day of ———, in the year of our Lord ———,* A. O. *of the parish of ——— in the said county of ———, labourer, was upon the complaint of* A. I. *of ———, in the said county, yeoman, convicted before us,* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county of ———, in pursuance of an act passed in the sixteenth year of the reign of his late Majesty king* George *the third, for that he the said* A. O. *on the ——— day of ——— last at the parish of ——— aforesaid, had in his possession, to wit, in his dwelling house, in the said parish of ———, one fallow deer, suspected to have been unlawfully killed, he the said* A. O. *not having produced before us the said justices, or either of us, the party of whom he received the said deer, nor having satisfied us or either of us that he came lawfully by the same, by reason whereof he the said* A. O. *hath forfeited the sum of ——— pounds, to be distributed as the said act directs. Given under our hands and seals the day and year first above written.*

X. Information against a Deer-Stealer in an uninclosed part of a Forest, &c.; on Stat. 42 *G.* 3. *c.* 107. § 2. *ante*, p. 613. From Chitty's G. L. App. 99. X.

County of ——— } *BE it remembered, that on the ——— day of ———, in the year of our Lord ———, at ———, in the said county of ———,* J. T. *of ———, gentleman, in his proper person, cometh before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of ———, and upon his corporal oath, maketh complaint and information unto me the said justice, that on the ——— day of ———, in a certain uninclosed part of a forest* (or "*chase,*" "*purlieu,*" or "*ancient walk,*") *of the right honourable* C. *earl of* D. *in the parish of ——— in the said county, one* O. O. *late of ———, in the county aforesaid, labourer, did wilfully and unlawfully course and hunt, and attempt to kill one fallow deer,* (or, as the case is, according to the words of the statute,) *of the said* C. *earl of* D. *there then being, without the consent of the said* C. *earl of* D. *the owner of the said deer, and without being otherwise duly authorized so to do, contrary to the form of the statute in that case made and provided, whereby he, the said* O. O. *hath forfeited the sum of* 50*l.*, *and therupon he, the said* J. T., *prayeth the judgment of me the said justice in the premises, and that he may have one moiety of the said forfeiture according to the form of the statute in that case made and provided; and that the said* O. O. *may be apprehended and brought before me, the justice aforesaid, to make answer unto the premises aforesaid.*

J. T.

Taken the day and year first above mentioned, before me, J. P.

Y. ## Y. Warrant thereon.

——— } To the constable of ———, in the parish of ———, in the county of ———.

WHEREAS J. T. *of* ———, *in the said county of* ———, *gentleman, hath, upon his corporal oath, this day made complaint and information before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* ———, *that on the* ——— *day of* ———, *in a certain uninclosed part of a forest* (or "*chase,*" "*purlieu,*" or "*ancient walk,*") *of the right honourable* C. *earl of* D. *in the parish of* ———, *in the said county, one* O. O. *late of* ———, *in the county aforesaid, labourer, did wilfully and unlawfully course and hunt, and attempt to kill one fallow deer of the said* C. *earl of* D. *there then being, without the consent of him the said* C. *earl of* D. *then owner of the said deer, and without being otherwise duly authorized so to do, contrary to the form of the statute in that case made and provided: These are therefore to command you to apprehend the said* O. O., *and to bring him before me, the said justice, at* ———, *in the said county, on* ——— *the* ——— *day of this present month of* ———, *to make answer unto the premises aforesaid, and be further dealt with according to law.*

Given under my hand and seal, the —— *day of* ———, *in the year of our Lord* ———

J. P. (L. S.)

Z. ## Z. Information on Stat. 57 *G.* 3. *c.* 90. *ante*, p. 609. for being found in a Close in the Night, having entered the same with intent illegally to kill, or to assist in killing, game. [Vide Chitty's G. L. App. p. 186.]

County of ——— } to wit. *THE information and complaint of* A. I. *of* ——— &c. *labourer, taken and made upon oath before me* J. O. *clerk, one of his majesty's justices acting in and for the said county of* ———, *on the* —— *day of* ———, *in the year of our Lord* ——— ; *who, on his oath saith, that on the* —— *day of* ——— *in the* —— *year of his majesty's reign, in the night-time, that is to say, between the hours of* (a) *six in the evening and seven in the morning, to wit, about the hour of eleven in the night of the said* —— *day of* ———, *he the said* A. I. *found* A. O. *late of the parish of* ———, *in the county of* ———, *labourer, in a certain close, in the occupation of* A. T., *and situate and being in the said parish of* ———, *he the said* A. O. *having entered into the said close with the intent illegally to destroy, take, and kill game,* [or *rabbits:* or "*with the intent to aid, abet, and assist a certain other person,* or *certain other persons, illegally to destroy, take, or kill game* or *rabbits.*] *and the said* A. O. *then and there being armed with a gun* (*bludgeon,* or as the case may be,) *contrary to the form of the statute in such case made and provided; and thereupon the said* A. I. *prayeth me the said justice to issue my warrant to apprehend*

(*a*) The hours should be laid as above, where the offence was committed between 1st of October and 1st of February. If it occurred at any other part of the year, this information may be easily altered to meet the facts, by inserting the different hours provided by the act. See *ante*, p. 609.

the said offender, in order that he may be dealt with according to law for his said offence. A. I.

Taken and sworn the day and year first above written, before me, J. O.

A. a. Warrant to apprehend on the foregoing Information. A. a.

County of ——— to wit. } *FORASMUCH as* A. I. *of, &c. labourer, hath this day made information and complaint, upon oath, before me,* J. O. *clerk, one of his majesty's justices of the peace acting in and for the said county of* ———, *that on the* —— *day of* ——— *in the* ——— *year of his majesty's reign, in the night-time, that is to say, between the hours of six in the evening and seven in the morning, to wit, about the hour of eleven in the night of the said* —— *day of* ——— *in the year aforesaid,* A. O. *late of the parish of* ——— *in the said county, &c. labourer, unlawfully did enter into and was found in a certain close, in the occupation of* A. T., *and situate and being in the said parish of* ———, *in the county of* ——— *aforesaid, with the intent illegally to destroy, take, and kill game,* [or *rabbits,* or, *with the intent to aid, &c.,* as in information,] *and the said* A. O. *then and there being armed with a gun* (*bludgeon* or as the case may be,) *contrary to the form of the statute in that case made and provided. These are therefore to command you to apprehend and to bring the said* A. O. *before me or some other of his majesty's justices of the peace acting for the said county of* ——, *to answer the premises, and to be further dealt with according to law.*

Given under my hand and seal this ——— *day of* ———, *in the year of our Lord* ———.

J. O. (L. S.)

B. b. Commitment on Stat. 57 G. 3. *c.* 90. *ante*, p. 609.

County of ——, to wit. } *J. O.* clerk, one of the justices of our lord the king, acting in and for the said county of ——.

To the constable of the parish of ———, in the said county of ———, and to the keeper of the common gaol at ———, in the said county.

THESE are to charge and command you the said constable of ———, *in his majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said gaol the body of* A. O., *this day brought before me the said justice, and charged upon the oath of* A. I. *with having, on the* ——— *day of* ———, *in the* ——— *year of the reign of our said lord the now king, in the night-time; that is to say, between the hours of six in the evening and seven in the morning, to wit, about the hour of eleven in the night of the said* —— *day of* ——— *in the* ——— *year aforesaid, unlawfully entered into a certain close in the occupation of* A. T. *situate and being in the parish of* ———, *in the county of* ——— *aforesaid, with the intent illegally to destroy, take, and kill game,* [or, *rabbits:* or, *with the intent to aid &c.,* as in information,] *he the said* A. O. *then and there being armed with a gun,*

(*bludgeon*, &c. as the case may be,) *contrary to the form of the statute in that case made and provided. And whereas the said* A. O. *hath been duly required by me the said justice to find bail for his personal appearance at the next general quarter sessions of the peace,* (or *next general commission of gaol delivery,*) *to be holden for the said county to answer for his said offence; but the said* A. O. *hath not found such bail: These are therefore to require you the said keeper to receive the said* A. O. *into your custody, and him there safely keep until he be delivered from your custody by due course of law. Herein fail you not.*

Given under my hand and seal, the ——— day of ——— in the year of our Lord ———.

(J. O. L. S.)

Gaming.

Sect. I. *Of Gaming in general, and the statutable Provisions respecting it.*
[33 H. 8. c. 9.—31 El. c. 5.—9 Ann. c. 14.—2 G. 2. c. 28.—18 G. 2. c. 34.—25 G. 2. c. 36.—58 G. 3. c. 70. 3 G. 4. c. 114.]

II. *Of Wagers.*
[16 C. 2. c. 7.—9 Ann. c. 14.—18 G. 2. c. 34.]

III. *Of Lotteries.*
[16 & 11 W. 3. c. 17.—9 Ann. c. 6.—10 Ann. c. 26.—8 G. 1. c. 2.—9 G. 1. c. 19.—6 G. 2. c. 35.—12 G. 2. c. 28.—13 G. 2. c. 19.—18 G. 2. c. 34.—27 G. 3. c. 1.—34 G. 3. c. 40.—42 G. 3. c. 119.]

Gaming not an offence at common law.

MR. *Dalton* says that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *mala in se* of their own nature, but only prohibited by statute. *Dalt. c.* 46.

Gaming-houses nuisances.

But it is clearly agreed, that all common gaming-houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices; and incite to idleness, and avaricious ways of gaining property, great numbers whose time might otherwise be employed for the good of the community. 1 *Haw.* c. 25. § 6. 1 *Russ.* 433.

The keeping of a common gaming-house, and for lucre and gain unlawfully causing and procuring divers idle and evil disposed persons to frequent and come to play together at a game called "Rouge et Noir," and

R. v. *Rogier and Humphrey, H.* 3 *&* 4 *G.*4. 1 *B. & C.* 272. This was an indictment against the defendants, and charged, that they unlawfully did keep and maintain a certain common gaming-house; and in the said common gaming-house, for lucre and gain, unlawfully and wilfully did cause and procure divers idle and evil-disposed persons to frequent and come to play together, at a certain unlawful game at cards, called "*Rouge et Noir;*" and in the said common gaming-house, unlawfully and wilfully did permit and suffer the said idle and evil-disposed persons to be and remain playing and gaming at the said unlawful game, called "*Rouge et Noir,*" for divers large and excessive sums of money, to the great damage and common nuisance of all the liege subjects of our lord the king. Plea, not guilty. A verdict having been found against

R. v. Rogier and Humphrey.

permitting the said idle and evil-disposed persons to remain playing at the said game for divers large and excessive sums of money, is an indictable offence at common law. *Semble,* That an indictment would be good merely charging the defendant with keeping a common gaming house. Per *Holroyd* J.

the defendants, *Curwood* and *Platt* now moved to arrest the judgment. The keeping of a common gaming-house is not an offence at common law: it is not necessarily a nuisance, but may, like a playhouse, become so, if it draw together such numbers of people as to become inconvenient to the places adjacent. In 1 *Hawk. c.* 75. § 6. 7th edit., there is this passage: "Also it has been said, that all common stages for rope-dancers, and also all common gaming-houses, are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood." This indictment does not shew that any inconvenience had accrued to the neighbourhood, by numbers of disorderly persons collected together; and, therefore, it does not come within the reason, in respect of which *Hawkins* states, that it had been said that a gaming-house was a nuisance. At common law gaming is not any offence. In *Bell* v. *The Bishop of Norwich,* (*Dyer,* 254. *b.*) it was held, that it was not sufficient cause for a bishop to refuse to admit a presentee to a living, that he was a haunter of taverns and unlawful games. Besides, the legislature have, by different statutes, [illegible] *H.* 8. *c.* 9. § 11. and 12., 12 *G.* 2. *c.* 28. § 2. and 3., 13 *G.* 2. c. 19. § 9., and 18 *G.* 2. *c.* 34. § 1. and 2., declared certain specified games to be unlawful, and *rouge et noir* is not one of them; and, in several of these statutes, royal palaces, during the residence of the sovereign, are exempted from the operation of the acts. Now, if gaming were an offence at common law, the legislature would not have given such a sanction to the commission of that offence, by exempting persons residing in the royal palaces from the penalties imposed by statutes. Inasmuch, then, as gaming is not *per se* an offence at common law, and the game of *rouge et noir* has not been declared illegal by the legislature, this indictment is bad, and the judgment must be arrested. — *Abbott* C. J. I have no doubt that the facts stated in this indictment constitute an offence at common law. *Hawkins,* in the passage which has been cited, observes, "It has been said that common gaming-houses are nuisances in the eye of the law;" and then he assigns the reason, viz. that they tend to produce certain evil consequences, which is not very different from saying that they are nuisances if those consequences are produced. Since his time many parties have been convicted upon indictments, in which the keeping of such a house has been charged to be an offence at common law. If any confirmation of the authority of *Hawkins* were wanting, it is to be found in the enactments of the legislature. The 25 *G.* 2. *c.* 36. § 5., after reciting that, in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses, enacts, "That if any two inhabitants of any parish give notice in writing to a constable, of any person keeping a bawdy-house, gaming-house, or any other disorderly house, the constable shall go with such inhabitants to a justice of the peace, and shall, upon such inhabitants making oath that they believe the contents of the notice to be true, enter into a recognizance to prosecute such offence, and the constable is to be allowed the expences of the prosecution, and each of the inhabitants is to receive 10*l.*" And section 8. recites, "That by reason of many subtle and crafty

R. v. Rogier and Humphrey. contrivances of persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is difficult to prove who is the real owner or keeper thereof, by which means many notorious offenders have escaped punishment;" and then enacts, "That any person who shall appear, act, or behave himself as master, or as the person having the care or management of any such house, shall be deemed to be the keeper thereof, and shall be liable to be prosecuted as such, although he be not the real owner." These provisions are a legislative declaration that the keeping of a gaming-house is an indictable offence. Besides, the 9 *Ann.* *c.* 14. § 2. makes playing at any game unlawful, if more than 10*l.* shall be lost. Now in this case the indictment states, not only that the defendants kept a common gaming-house, but that they permitted persons to play there for divers large and excessive sums of money. The playing for large and excessive sums of money would of itself make any game unlawful; and if so, there can be no doubt that this is an offence at common law. — *Bayley*, *Holroyd*, and *Best* Js. concurred, and *Holroyd* J. further added, that in his opinion it would have been sufficient merely to have alleged, that the defendants kept a common gaming-house. — R. R. (*a*)

33 H. 8. c. 9. Gaming-houses prohibited by the 33 H. 8.

By stat. 33 *H.* 8. *c.* 9. § 11. No person shall for his gain, lucre, or living, keep any common house, alley, or place of bowling, coyting, cloysh, cayls, half-bowl, tennis, dicing-table, carding, or any unlawful game then or thereafter to be invented, on pain of forfeiting 40*s.* a day.

But it was resolved upon this clause, in the third year of *J.* 1., that if the guests in an inn or tavern call for a pair of dice or tables, if the house be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the house, this is not within the statute, nor is such person that plays in such house that is not kept for lucre or gain within the penalty of that law. *Dalt.* *c.* 46.

Haunting gaming-houses.

And moreover, by the same stat., § 12., it is further enacted, that every person using and haunting any of the said houses and plays, and there playing, shall forfeit 6*s.* 8*d.*

Power of the justices as to the keepers of such houses, and those found there.

§ 14. And all justices of the peace in every shire, mayors, sheriffs, bailiffs, and other head officers in every city, town, and borough, may enter all such houses, places, and alleys, where such games shall be suspected to be holden, exercised, used, or occupied, and as well the keepers of the same, as also the persons there haunting, resorting, and playing, may take, arrest, and imprison, and keep in prison until the keepers and maintainers of the said plays and games have found sureties to the king's use, to be bound by recognizance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley, or place; and also that the persons there so found be in like case bound by themselves, or with sureties, no more to play, haunt, or exercise from thenceforth, in, at, or to any of the said places, or at any of the said games.

And of officers in cities and towns.

§ 15. And the mayors, sheriffs, bailiffs, constables, and other head officers, within every city, borough, or town, shall make due search weekly, or at the furthest once a month, in all places where

(*a*) In *Rex* v. *Dixon*, 10 *Mod.* 336., it was held that the keeping of a gaming-house was an offence at common law as a nuisance. In *Rex* v. *Mason*, *Leach's C.C.* p. 548. *Grose* J. seemed to be of opinion, that the keeping of a common gaming-house might be described generally. See also 2 *Hawk.* *c.* 25. *s.* 59.

any such houses, alleys, plays, or places shall be suspected to be had, kept, and maintained; and if they shall not make such search at the furthest once a month, if the case so require, every such person offending shall forfeit 40*s*. for each month. 33 H. 8. c. 9.

§ 16. By the same act, no manner of artificer, or craftsman of any handicraft or occupation, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariners, fishermen, watermen, or any serving man, shall play at the tables, tennis, dice, cards, bowls, clash, coyting, logating, or any other unlawful game, out of *Christmas*, on pain of 20*s*. for every time; and in *Christmas* to play at the said games in their masters' houses, or in their masters' presence; and also no person shall at any time play at bowl or bowls in open places out of his garden or orchard, on pain of 6*s*. 8*d*. for every time of offending. See *R*. v. *Clarke*, 1 *Cowp*. 35. Artificers and servants.

§ 22. But any master may license his servant to play at cards, dice, or tables, with himself, or with any other gentleman repairing to his said master openly in his house, or in his presence. Masters may license such.

§ 23. And any nobleman or other person having manors, lands, tenements, or other yearly profits for life, in his own or his wife's right, of 100*l*. a year, may command or license his servants, or family of his house, to play within the precinct of his house, garden, or orchard, at cards, dice, tables, bowls, or tennis, as well among themselves as others repairing to the same house. Also certain persons may.

§ 16. And all justices of peace, mayors, bailiffs, sheriffs, and other head officers, and every of them, *finding or knowing* any person using unlawful games, contrary to this act, may commit every such offender to ward, there to remain without bail or mainprize till he be bound by obligation to the king's use, in such sum as by the discretion of the said justices, mayors, bailiffs, or other head officers, shall be thought reasonable, that they shall not from thenceforth use such unlawful games. Punishing offenders using unlawful games.

By stat. 2 *G*. 2. *c*. 28. § 9. where it shall be *proved on the oath of two witnesses* before any justice of the peace, as well as where he shall find upon his own view, that any person hath used any unlawful game contrary to the said statute of *H*. 8., the said justice shall have power to commit him to prison without bail, unless and until he shall enter into one or more recognizance or recognizances with sureties, or without, at the discretion of the justice, that he shall not from thenceforth play at or use such unlawful game. 2 G. 2. c. 28.

And by stat. 33 *H*. 8. *c*. 9. § 18. where any of the forfeitures above mentioned shall be found within the precinct of any franchise or leet, the lord shall have one half, and the other half shall be to him that shall sue in any of the king's courts; and elsewhere, they shall be half to the king, and half to him that shall sue in like manner. 33 H. 8. c. 9. Application of the penalties.

But by stat. 31 *El*. *c*. 5. § 7. all suits to be pursued upon any statute (that is, any statute then in force) for using any unlawful game shall be sued and prosecuted, or otherwise heard and determined, in the general quarter sessions or assizes of the county where the offence shall be committed, or in the leet within which it shall happen, and not in any wise out of the county. 31 El. c. 5. How to be recovered.

And by stat. 18 *G*. 2. *c*. 34. § 7. no privilege of parliament shall be allowed to any person, against whom a prosecution shall be commenced, for keeping any public or common gaming-house, or 18 G. 2. c. 34. No privilege of parliament.

any house, room, or place for playing at any before or now prohibited game.

25 G. 2. c. 36. Houses of public amusement within London and 20 miles thereof to be licensed.

By stat. 25 *G.* 2. *c.* 36. § 2. any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind in *London* and *Westminster*, or within 20 miles thereof, without licence from the last preceding *Michaelmas* quarter sessions, under the hands and seals of four or more justices there assembled (except the theatres of *Drury-lane, Covent-garden,* and *Hay-market,* and other entertainments exercised by letters patent or licence of the crown, or of the lord chamberlain, § 4.) shall be deemed a disorderly house or place; and the keeper thereof shall forfeit 100*l.* with full costs to him who shall sue (in six months) in any of the courts at *Westminster,* and be otherwise punishable as in cases of disorderly houses.

The person acting as master to be deemed the keeper.

And the person who shall appear to act as master, or as having the management of such gaming house or other disorderly house, shall be deemed a keeper thereof, and liable as such. And it shall be lawful for any constable, or other person being authorized by warrant under the hand and seal of one justice, to enter such house or place, and to seize every person found therein, that they may be dealt with according to law.

License.

§ 3. Which said licence shall be granted at the last preceding *Michaelmas* sessions, and shall be signed and sealed by four justices in open court, and afterwards be publicly read by the clerk of the peace, with the names of the justices subscribing the same; and no such licence shall be granted at any adjourned sessions; nor shall any fee be taken for the same. And there shall be affixed and kept up in some notorious place, in large capital letters over the door or entrance of every such licensed house or place, *Licensed pursuant to act of parliament of the twenty-fifth of king* George *the second;* and it shall not be opened for such purposes before five in the afternoon. And the affixing and keeping up such inscription, and the said limitation in point of time, shall be inserted in and made conditions of such licence; and in case of a breach of either of the said conditions, the licence shall be forfeited, and revoked by the justices at the next sessions, and shall not be renewed; nor shall any new licence be granted.

Constable's duty upon notice of gaming-houses, &c.

§ 5. "And in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses," it is enacted, "That if any two inhabitants of any parish or place paying scot and bearing lot therein, do give notice in writing to any constable (or other peace officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house, in such parish or place, the constable or such officer as aforesaid, so receiving such notice, shall forthwith go with such inhabitants to one of H. M.'s justices of the peace of the county, city, riding, division, or liberty in which such parish or place does lie; and shall, upon such inhabitants making oath before such justice, that they do believe the contents of such notice to be true, and entering into

Recognizance.

a recognizance in the penal sum of 20*l.* each, to give or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of 30*l.* to prosecute with effect such person for such offence at the next general or quarter session of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem

meet; and such constable or other officer shall be allowed all the reasonable expences of such prosecution, to be ascertained by any two justices of the peace (F.) of the county, city, riding, division, or liberty where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants; and in case such overseers shall neglect or refuse to pay to such constable or other officer such expences of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of 10*l.* and 10*l.*, such overseers, and each of them, shall forfeit to the person entitled to the same, double the sum so refused or neglected tobe paid."

25 G.2. c.36. Charges of prosecution. (F.) Reward. Penalty.

§ 6. Provided "that upon such constable or other officer entering into such recognizance to prosecute as aforesaid, the said justice of the peace shall forthwith make out his warrant, to bring the person so accused of keeping a bawdy-house, gaming-house, or other disorderly house, before him, and shall bind him or her over to appear at such general or quarter session or assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person's good behaviour in the mean time, and until such indictment shall be found, heard, and determined, or be returned by the grand jury not to be a true bill."

Person keeping bawdy-houses, &c. to be bound over.

And by stat. 58 *G.* 3. *c.* 70. § 7. after reciting the above provision of 25 *G.* 2. *c.* 36. § 5., and that it is expedient, that when any two inhabitants of any parish or place, paying scot and bearing lot therein, shall give notice in writing to any constable of such parish or place of any person keeping a bawdy-house, gaming-house, or any other disorderly house, in such parish or place, that the overseers of the poor of such parish or place shall have notice thereof; it is enacted, that a copy of the notice (A.) which shall be given to such constable shall also be served on or left at the places of abode of the overseers of the poor of such parish or place, or one of them, and such overseers or overseer of the poor shall be summoned or have reasonable notice to attend before such justice of the peace before whom such constable shall have notice to attend; and if such overseers or overseer of the poor shall then and there enter into such recognizance to prosecute such offender as the constable is in and by the said act required to enter into, then it shall not be necessary for, nor shall such constable be required to enter into such recognizance; but if such overseers or overseer of the poor shall neglect to attend such justice on having such notice, or shall attend, and shall decline or refuse to enter into such recognizance to prosecute, then such constable shall enter into the same, and shall prosecute, and shall be entitled to his expences, to be allowed as in and by the said act is directed.

58 G. 3. c. 70. Notices directed by 25 G. 2. c. 36. to be given to constables in certain cases, to be given also to the overseers of the poor; who are to prosecute. (A.)

By stat. 25 *G.* 2. *c.* 36. § 7. if the constable shall neglect or refuse, upon such notice, to go before a justice, or to enter into recognizance, or shall be wilfully negligent in carrying on the prosecution, he shall forfeit 20*l.* to each of the said inhabitants.

25 G. 2. c. 36. Penalty.

§ 8. The person appearing or acting as master, or as having the care and management of any gaming-house, shall be taken to be the keeper thereof, and liable as such.

Who shall be deemed master.

25 G. 2. c. 36. **Parishioner may give evidence.** § 9. And on trial, any person may give evidence against the defendant, notwithstanding his being a parishioner, or having entered into such recognizance.

§ 10. And no indictment for such offence shall be removed by *certiorari*.

9 Ann. c. 14. **Losing 10*l*. or upwards at a time.** By stat. 9 *Ann. c.* 14. § 2. any person who shall *at any time or sitting*, by playing at cards, dice, tables, or *other game or games whatsoever*, or by betting on the sides of such as do play, *lose* to any one or more persons so playing or betting in the whole the sum or value of 10*l*., and shall pay or deliver the same, or any part thereof; the person so losing and paying or delivering the same shall be at liberty in three months then next to sue for and recover the same with costs in any court of record; and if he shall not *bonâ fide* sue in three months, it shall be lawful for any person to sue for and recover the same and treble value, with costs; half to such person who shall sue, and half to the poor.

9 Ann. c. 14. 18 G. 2. c. 34. By stats. 9 *Ann. c.* 14. § 3. and 18 *G.* 2. *c.* 34. § 3. every person who shall be so liable to be sued for the same shall be obliged and compellable to answer on oath such bill as shall be preferred against him, for discovering the sum of money or other thing so won at play.

The stat. of Ann. is a remedial act. This is a remedial act; and there is a clear distinction between remedial and penal acts, that in the former, a debt is due to the party grieved before the commencement of the action; but not in the latter.

The assignees of a bankrupt may recover from the winner money lost at play by the bankrupt before his bankruptcy, in an action of debt on the statute 9 *Ann. c.* 14.; the meaning of the act being that the money lost and paid to the winner is part of the property of the loser. *Brandon* v. *Pate*, 2 *H. Blac.* 308. *See also* 2 *Ves. jun.* 514.

9 Ann. c. 14. **Fraudulent winning.** By stat. 9 *Ann. c.* 14. § 5. if any person shall by any fraud, circumvention, deceit, or unlawful device or ill practice in playing at or with cards, dice, or any of the games (in this act aforesaid), or by bearing a part in the stakes, wagers, or adventures, or by betting on the sides of such as do play, win, obtain, or acquire to himself or any other any sum of money or other valuable thing whatsoever, or shall, at any one time or sitting, win of any one or more person or persons whatsoever above the sum of 10*l*., and being convicted upon an indictment or information, he shall forfeit five times the value of the money or thing so won; and in case of such ill practice shall be deemed infamous, and suffer corporal punishment as in cases of wilful perjury. The penalty to be recovered by those who will sue.

Justices may call before them suspected gamblers. By § 6. any two justices may cause to come before them any person whom they shall have just cause to suspect to have no visible estate, profession, or calling to maintain themselves by, but do for the most part support themselves by gaming; and if such persons shall not make it appear that the principal part of his expences is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for 12 months, and in default thereof shall commit him to the common gaol, there to remain till he find such securities.

§ 8. Relates to penalties for assaults and challenges on account of money won by gaming. See Vol. I. p. 230.

At any time or sitting.] *Bones* v. *Booth*, 2 *Blac. Rep.* 1226.

Two persons played at cards from *Monday evening* to *Tuesday evening* without any interruption, except for an hour or two at dinner, and one of them won a balance of seventeen guineas, this was held to be won at one sitting within the statute. *Per Blackstone* J. To lose 10*l.* at one *time* is to lose it by a single stake or bet; to lose at one *sitting* is to lose it in a course of play where the company never parts, though the person may not be astually gaming the whole time.——*Nares* J. the statute is *remedial* where the action is brought by the party injured, but *penal* where brought by a common informer. 9 Ann. c. 14. What is a losing at *one time*, and what a losing at *one sitting*.

By 18 *G.* 2. *c.* 34. § 1. No person shall keep any house, room, or place for playing, or permit any person within any such house, &c. to play at the game of roulet (or roly-poly), or at any other game with cards or dice, already prohibited by law; and if any person shall keep such house, &c. for playing, or permit any person to play as aforesaid, he shall incur the penalties of stat. 12 *G.* 2. *c.* 28. 18 G. 2. c. 34. Gaming houses.

By stat. 3 *G.* 4. *c.* 114. Persons convicted of keeping a common gaming-house may be sentenced to imprisonment, with hard labour for any term not exceeding that for which such court may now imprison for such offence, either in addition to, or in lieu of any other punishment which may be inflicted on any such offenders by any law in force before the passing of this act, (5th *Aug.* 1822,) and every such offender shall thereupon suffer such sentence, in such place, and for such time as aforesaid, as such court shall think fit to direct.

By stat. 18 *G.* 2. *c.* 34. § 2. If any person shall play at roulet (or roly-poly), or at any game with cards or dice, already prohibited by law, he shall also incur the pains and penalties of stat. 12 *G.* 2. *c.* 28. 18 G. 2. c. 34. Playing at roly-poly.

By § 4. Persons having jurisdiction to hear and determine informations upon the statutes against excessive gaming, may upon any information exhibited before them for offences against this act summon any person (other than the party accused) to appear before them at a certain day, time, and place; and to give evidence for the discovery of the truth of the matter in the said information contained; in case of neglect and refusal to appear, or if on appearing, such person shall refuse to give evidence, or shall give false evidence, he shall forfeit 50*l.*, to be levied by distress and sale; and in default of sufficient distress, he shall be committed to the common gaol for six months. Power of justices under 18 G. 2. c. 34.

By § 5. Persons may be witnesses, though they have played, betted, or staked at any such prohibited games. Witnesses.

And by § 8. If any person shall win or lose at play, or by betting, at any one time, the sum or value of 10*l.*, or within 24 hours the sum or value of 20*l.*, he shall be liable to be indicted for such offence within 6 months after it is committed, before the justices of the king's bench, assize, gaol delivery, or grand sessions; and on conviction shall be fined five times the value of the sum so won or lost; which fine (after charges as the court shall adjudge reasonable are allowed to the prosecutors and evidence) shall go to the poor where the offence was committed. See 1 *Russ.* 595. Persons winning or losing certain sums liable to be indicted, &c.

By § 10. this act is not to invalidate stat. 9 *Ann. c.* 14.

Gaming in public houses. See stat. 3 *G.* 4. *c.* 77. § 9. scheds. A. & B. Vol. I. pp. 62. 82. 84.

§ II. Of Wagers.

9 Ann. c. 14. Horse-racing is within the stat.

Or other game whatsoever.] It has been holden that laying above ten pounds on a *horse-race* is an illegal bet within the statute of *Anne*, on the ground that the statute ought to be extended to all *sports* as well as games, in order to prevent excessive betting. *Goodburn* v. *Marley*, 2 *Str.* 1159. *Blaxton* v. *Pye*, 2 *Wils.* 309.

And also foot-racing.

And in *Lynall* v. *Longbotham*, 2 *Wils.* 36., the court of C. P. were of opinion, that a *foot-race*, whether the race be upon a given distance, or against a certain time, is a game prohibited by 9 *Ann.* c. 14.

And a wager that a person did not find, within such a time, a man who should carry on foot 24 stone weight, ten miles in fifteen hours, has been holden to be within the same principle. *Brown* v. *Beckley*, 1 *Cowp.* 282.

It has been determined, that a wager of 10*l.* to 5*l.* upon a horse-race, is within this statute; although the race was for a legal plate. *Clayton* v. *Jennings*, 2 *Blac. Rep.* 706.

Cricket.

In *Jeffreys* v. *Walter*, 1 *Wils.* 220. The court inclined to think, that cricket was a game within the meaning of stat. 9 *Ann.* *c.* 14.

As to losing by betting, see 18 *G.* 2. *c.* 34., and 9 *Ann.* *c.* 14. *ante*, 662.

16 C. 2. c. 7. Losing above 100*l.* at a time.

By stat. 16 *C.* 2. *c.* 7. § 3. If any person shall play at cards, dice, tables, tennis, bowls, skittles, shovelboard, or any other pastime or game whatsoever, (other than for ready money,) or bet on the sides of such as shall play, and shall lose any sum or other thing, exceeding 100*l.*, at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same at the time when he shall lose the same, in such case he shall not be bound to make it good, but the contract for the same and for every part thereof and all assurances and securities for the same shall be void; and the winner shall forfeit treble value of all such sums as he shall so win above 100*l.*, half to the king, and half to him that shall sue in one year in any of the courts of record at *Westminster*, with treble costs.

Relief may be had in equity.

In the case of *Humphries* v. *Rigby*, 2 *Eq. Ab.* 184., a bill was brought, to be relieved against a bond for money won at all-fours. The plaintiff was a distiller, and the defendant a tapster at a bowling-green. And it appearing that the defendant laid the cards, and turned up the knave of clubs, which was jack, several times together, and it being an unreasonable sum for such persons to venture; the plaintiff was relieved, and the bond ordered to be delivered up, although this case was not within the statute, the bond being for less than 100*l.* For equity always relieved, before the statute, where any fraud appeared.

9 Ann. c. 14. Securities to be void.

By 9 *Ann.* *c.* 14. § 1. All notes, bills, bonds, judgments, mortgages, or other securities, where the whole or any part of the consideration shall be for money or any other valuable thing won by playing at cards, dice, tables, tennis, bowls, or other game whatsoever, or by betting on the sides of such as do game, or for the reimbursing or repaying any money knowingly lent or advanced at the time and place of such play to any person so

gaming or betting, or that shall (during such play) so play or bet, — shall be void; and where such securities shall be of lands, or such as incumber or affect the same, they shall enure and be to the sole use and benefit of and devolve upon such person as might have such lands, in case the said grantor, or person so incumbering the same, had been dead; and all conveyances to hinder them from devolving on such person shall be void.

In *Bowyer* v. *Bampton*, 2 *Str.* 1155., it was holden that an innocent indorsee for a valuable consideration, without notice, could not maintain an action on a promissory note given for money knowingly lent to game with at dice.

The statute only avoids securities for money won or lost at play, and does not extend to cases of mere *loans*, without any security taken. *Barjeau* v. *Walmesley*, 2 *Str.* 1249.

Edwards v. *Dick*, *H.* 1 & 2 *G.* 4. 4 *B.* & *A.* 212. Assumpsit by plaintiff, as indorsee, against the defendant as drawer and indorser of a bill of exchange. The bill was dated *December* 1st, 1819, and was drawn by defendant upon, and accepted by, Lord *R.*, for the sum of 240*l.*, payable at three months, at Mr. *Newland*'s chambers, *New Inn*. Plea, general issue. At the trial before *Bayley* J., it appeared that the bill had been duly presented and dishonoured; but no notice had been given to the acceptor of its dishonour. It was also proved that it had been drawn and accepted in discharge of a debt for money won at play, but that the plaintiff had received it from the drawer in payment of a *bonâ fide* debt. The learned judge was of opinion, that neither of these circumstances formed any defence to the present action, and the plaintiff obtained a verdict. On motion to enter a nonsuit the court held that the stat. 9 *Ann.* *c.* 14. § 1. did not extend to this case, and therefore refused the rule. *Abbott* C. J. said, For the purpose of preventing fraud we cannot permit the defendant to set up his own gaming as a defence.

In an action against the drawer of a bill payable at a particular place, it is no defence that no notice of the dishonour has been given to the acceptor; nor that the bill was accepted for a gaming debt, if it be indorsed over by the drawer for a valuable consideration, to a third person, by whom the action is brought.

Securities.] The word *securities*, as it stands in this act, must mean lasting liens upon the estate. The parliament might think there would be no great harm in a parol contract where the credit was not like to run very high, and therefore confined the act to written securities. *Per Lee* C. J. *in Barjeau* v. *Walmsley*, supra.

See *also Alcinbrook* v. *Hall*, 2 *Wils.* 309. *Robinson* v. *Bland*, 2 *Burr.* 1077. *Wettenhall* v. *Wood*, 1 *Esp.* 18. *Vaughan* v. *Whitcomb*, 2 *N. R.* 413.

An action cannot be maintained upon such wagers as, in the event, may have an influence on the public policy of the kingdom. 2 *Selw. N. P.* 1302.

In *Gilbert* v. *Sykes*, *Bart.*, 16 *East*, 150., the defendant, in the year 1802, in consideration of one hundred guineas, agreed to pay the plaintiff a guinea a day during the life of *Buonaparte*. The defendant paid the guinea a day for some years; but then desisted. The action was brought to recover the arrears. The jury having found a verdict for defendant; on motion for a new trial, it was contended, in support of the verdict, that the wager was illegal, inasmuch as it had a tendency to create an interest in the plaintiff in the life of a foreign enemy, and which, in the case of invasion, might induce him to act contrary to his allegiance. The court being of opinion, that the justice of the case had been satisfied,

refused to disturb the verdict; and Lord *Ellenborough* C. J. expressed a strong opinion against the legality of the wager, as well on the ground before mentioned, as also on the ground, that the party suffering under such a contract might be induced to compass and encourage the horrid practice of assassination, in order to get rid of a life so burthensome to him.

An action cannot be maintained upon a wager on a cock-fight, because it is a barbarous diversion, which ought not to be encouraged or sanctioned in a court of justice; and further, because it would tend to the degradation of the court to entertain such inquiries: nor where the discussion of the subject of the wager will be attended with injury to a third person, and lead to indecent evidence. *Squires* v. *Whitaker*, 3 *Campb.* 140. 2 *Selw. N. P.* 1304.

On this principle, a wager between two indifferent persons on the sex of the *Chevalier D'Eon*, who had appeared to the world as a man, and acted in that character in a variety of capacities, was holden illegal. *Dacosta* v. *Jones*, 2 *Cowp.* 729.

In a late case, *Gibbs* C. J. refused to try an action upon a wager whether an unmarried woman had had a child. *Ditchburn* v. *Goldsmith*, 4 *Campb.* 152. See *also Brown* v. *Leeson*, 2 *H. Blac.* 43. *Henkin* v. *Gerss*, 2 *Campb.* 408.

9 Ann. c. 14. Persons suspected of supporting themselves by gaming.

By stat. 9 *Ann. c.* 14. § 6. Any two justices may cause to come or to be brought before them every person whom they shall have just cause to suspect to have no visible estate, profession, or calling, to maintain themselves by, but do for the most part support themselves by gaming; and if such person shall not make it appear to the said justices that the principal part of his expences is not maintained by gaming, they shall require of him sufficient sureties for his good behaviour for twelve months, and in default of his finding such securities shall commit him to the common gaol until he shall find such securities as aforesaid.

§ 7. And if he shall, during the time for which he shall be bound, at any one time or sitting, play or bet for any sums or other thing exceeding in the whole the value of 20*s.*, such playing shall be deemed a forfeiture of the recognizance.

16 C. 2. c. 7. Cheating.

By stat. 16 *C.* 2. *c.* 7. § 2. If any person shall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, skittles, shovelboard, or by cock-fightings, horse-races, dog-matches, foot-races, or other pastimes or games; or by bearing a share in the stakes; or by betting on the sides of such as shall play, act, ride or run as aforesaid,—win any sum or other valuable thing; he shall forfeit treble the value, half to the king, and half to the party grieved, (if he shall sue in six months,) otherwise to any person who shall sue in one year next after the said six months, in any of the courts of record at *Westminster*, with treble costs.

9 Ann. c. 14.

And by stat. 9 *Ann. c.* 14. § 5. If any person shall by any fraud or shift, cosenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforesaid, or bearing a share in the stakes, or betting on the sides of such as do play, win any sum of money or other valuable thing, or shall at any one sitting, win of one or more persons above the value of 10*l.*, and shall be convicted thereof upon indictment or information; he shall forfeit five

times the value of such money or other thing so won, and shall be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury; and such penalty shall be recovered by such person as shall sue for the same, by such action as aforesaid. 9 Ann. c. 14.

The loser is a good witness to prove the loss. *R.* v. *Luckup,* M. 9 *G.* 2. *B. R. cited Will.* 425. (*n. c.*)

R. v. *Luckup,* 2 *Str.* 1048. The defendant was convicted on an information upon this act. And it was moved, that a fine should be set upon the defendant, if he refused to speak with the prosecutor. —— But by the court: All the judgment that we can give is, *that he is convicted;* and a new action must be brought upon that judgment for the forfeiture. And the defendant was discharged, without any fine or costs.

It was held by Lord *Ellenborough* C. J. that upon an indictment on this statute for winning more than 10*l.* at one sitting, the defendant may be convicted of winning a less sum than that stated in the indictment. *R.* v. *Hill, Darley, and others,* 1 *Stark. N. P.* 359.

Quarrelling.

And by stat. 9 *Ann. c.* 14. § 8. For the preventing such quarrels as may happen on the account of gaming, if any person shall assault and beat, or challenge or provoke to fight, any other person whatsoever on account of any money won by gaming, playing, or betting, at any the games aforesaid, he shall, on conviction thereof by indictment or information, forfeit to the king all his goods, chattels, and personal estate whatsoever, and shall also suffer imprisonment without bail or mainprize, in the common gaol of the county where the conviction shall be had, during the term of two years.

Royal palaces excepted.

It is generally provided by the several statutes that nothing therein shall hinder any person from playing at any the games aforesaid within any of the king's royal palaces, where he shall then reside.

§ III. Of Lotteries.

10 & 11 W. c. 17 Lottery, a nuisance.

By stat. 10 & 11 *W.* 3. *c.* 17. § 1. All lotteries are declared to be public nuisances; and all grants, patents, and licences, for such lotteries, to be against law.

Keeping or playing at a lottery.

§ 2. No person shall expose to be played, drawn, or thrown at, or shall publicly or privately exercise, keep open, shew, or expose to be played at, drawn, or thrown at, or shall draw, play, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and every person who shall so exercise, expose, open, or shew to be played, drawn, or thrown at any such lottery, play, or device, shall forfeit 500*l.*, one third to the king, one third to the poor, and one third with double costs to him that shall inform and sue in the courts at *Westminster;* and the offenders shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided.

§ 3. And every person who shall play, throw, or draw at any such lottery, play, or device, shall forfeit 20*l.*, to be recovered in like manner.

9 Ann. c. 6. Power of the justices.

By stat. 9 *Ann.* c. 6. § 56. All justices of the peace, mayors, bailiffs, head officers, constables, and other civil officers, shall use their utmost endeavours to prevent the drawing of any such unlawful lottery, by all lawful ways and means; and every person who shall set up, or shall by writing or printing publish the setting up any such unlawful lottery, with intent to have such lottery drawn, shall forfeit 100*l.*; one third to the king, one third to the poor, and one third with full costs to him who shall sue in the courts at *Westminster.*

10 Ann. c. 26. Insurances.

Penalty.

By stat. 10 *Ann.* c. 26. § 109. Every person, who shall keep any office or place for making insurances on marriages, births, christenings, or service, or any other office or place under the denominations of sales of gloves, of fans, of cards, of numbers, of the queen's picture, for the improvement of small sums of money, or the like offices or place, shall forfeit 500*l.*; one third to the king, one third to the poor, and one third with full costs to him who shall inform or sue. And every printer, or other person, who shall by writing or printing publish the setting up or keeping any such office or place for such purpose, shall forfeit 100*l.*, to be recovered and distributed in like manner.

8 G. 1. c. 2. Sales of lands or goods; and chances in public lotteries.

By stat. 8 *G.* 1. *c.* 2. § 36, 37. Every person who shall keep any office or place, under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things for the improvement of small sums of money; or shall sell or expose to sale the same or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some public lottery; or shall deliver out tickets to the persons advancing such sums to entitle them to a share of the money so advanced, according to any proposal or schemes; or shall make, print, or publish any proposal or scheme of the like nature, under any denomination whatsoever, ——— and shall be thereof convicted on oath of one witness by two justices where the offence shall be committed, or the offender shall be found, he shall, over and above any penalties by any former act made against private lotteries, forfeit 500*l.*, one third to the king, one third to the informer, and one third to the poor, to be levied by distress and sale by warrant of such justices; and shall also by such justices be committed to the county gaol without bail for one whole year, and from thence till the said sum of 500*l.* shall be paid: provided that persons aggrieved may appeal to the next quarter sessions. And every person who shall be adventurer in, or any way contribute unto, or on the account of any such sales, lotteries, proposals, or schemes, shall forfeit double the sum contributed, with costs, half to the king, and half to him who shall sue in the courts at *Westminster.*

12 G. 2. c. 28.

By stat. 12 *G.* 2. *c.* 28. § 1. If any person shall erect, set up, continue, or keep any office or place, under the denomination of a sale of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by lots, tickets, numbers, or figures, cards or dice; or shall make, print, advertise, or publish, or cause to be made, &c. proposals or schemes for advancing small sums by several persons, amounting in

the whole to large sums, to be divided among them by chances of the prizes in some public lottery established by act of parliament, or shall deliver out tickets, or cause or procure to be delivered out to persons advancing such sums, to entitle them to a share of the money so advanced, according to such proposals or schemes; or shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatsoever, depending upon, or to be determined by, any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever, shall, on conviction by one justice, on oath of one witness or on view of such justice, forfeit 200*l.*, to be levied by distress and sale; which forfeiture, after deducting reasonable charges of the prosecution, shall be one third to the informer, and two thirds to the poor of the parish: but where the person convicted shall be in the city of *Bath*, then the two thirds shall go to the use of the poor residing within the hospital or infirmary erected for the benefit of poor persons resorting to the said city for the benefit of the mineral waters, after deducting the charges of conviction as aforesaid. See also 42 *G.* 3. *c.* 119. § 5. *post.*

12 G.2. c.28.

Exposing to sale lands, jewels, &c. by any game.

Penalty how to be levied.

And by § 2. The games of the ace of hearts, pharaoh, basset, and hazard, are declared to be games and lotteries by cards or dice within the meaning of stats. 10 & 11 *W.* 3. *c.* 17. — 9 *Ann. c.* 6. § 56. — 10 *Ann. c.* 26. § 109. — 9 *G.* 1. *c.* 19. And every person who shall set up, maintain, or keep the said games, shall be liable to the forfeitures under this act, and prosecuted in like manner, and the penalties and forfeitures sued for in like manner.

By § 3. "All and every person or persons who shall be adventurers in any of the said games, lottery or lotteries, sale or sales; or shall play, set at, stake, or punt at either of the said games of the ace of hearts, pharaoh, basset, and hazard, and shall be thereof convicted in such manner and form as in and by this act is prescribed; every such person or persons shall forfeit and lose the sum of 50*l.*, to be sued for and recovered as aforesaid."

Penalty on the adventurers.

And by stat. 13 *G.* 2. *c.* 19. § 9. Also the game of passage, and every other game with one or more die or dice, or with any other instrument, engine, or device, in the nature of dice, having one or more figures or numbers thereon (backgammon and the other games now played with the backgammon tables only excepted), shall be deemed games or lotteries by dice within the said act of 12 *G.* 2. *c.* 28.

13 G.2. c.19.

And every person who shall set up, maintain, or keep any office, table, or place for the game of passage, or any other such game as aforesaid (except as excepted), shall severally forfeit as in stat. 12 *G.* 2. *c.* 28.

Moreover, by stat. 12 *G.* 2. *c.* 28. § 4. Every such sale of houses, lands, advowsons, presentations, plate, jewels, ships, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, shall be void; and the same being exposed to sale in manner aforesaid, shall be forfeited to such persons as shall sue for the same in any court of record, or at the assizes.

12 G.2. c.28.

And by stat. 18 *G.* 2. *c.* 34. No person shall keep any house or place for playing, or permit any person within such house to play,

Keeping a gaming-house.

at any prohibited game, with cards or dice, under the penalties of 12 *G*. 2. *c*. 28. § 1. (See 18 *G*. 2. *c*. 34. *ante*, p. 663.)

12 G.2. c.28. Power of the justices.

§ 1. 8. In case such offender have not sufficient goods and chattels whereon to levy the said penalties, or do not immediately pay or secure the same, he may be committed to the common gaol for any time not exceeding six months.

Appeal.

By § 5. Persons aggrieved may appeal to the next sessions, giving reasonable notice to the prosecutor, and entering into recognizance before some (*a*) justices with two sureties to try such appeal at such sessions, and the matter shall be then finally heard and determined, and not afterwards; and in case such conviction or judgment be affirmed, the appellant shall pay treble costs; to be recovered as costs of suit may by any defendant in any other cases by law.

Where a statute gives an appeal, the appellant giving reasonable notice to the other parties, such notice need not be in writing, but a verbal notice, if reasonable as to time, is sufficient.

R. v. *The Justices of Surrey*. *H.* 2. & 3 *G.* 4.—5 *B.* & *A.* 539. R. N. for a mandamus to the justices of *Surrey* to enter continuances and hear the appeal of *Andrew Barnet* against a conviction for gaming under stat. 12 *G*. 2. *c*. 28. The defendant was convicted on the 6th of *November*, 1821, and entered into recognizances to appeal against it to the next quarter sessions. It was sworn on the one side, and denied by the other, that at the time of entering into recognizances his attorney gave a verbal notice to the informer of his intention to appeal. The defendant attended in order to prosecute his appeal at the *January* sessions, 1822, when there having been no notice of appeal in writing, the court refused to hear the appeal. The fifth section of the act giving the appeal states, that "persons aggrieved may appeal, giving reasonable notice to the prosecutor, and entering into recognizances," &c. It was contended, that the sessions were to judge what was a reasonable notice of appeal, and they were of opinion that it must be a notice in writing. *Sed per Abbott* C. J. "We are of opinion, that *where a statute requires reasonable notice to be given, it does not necessarily mean that the notice should be in writing, but only that as to time or number of days it should be reasonable.* Here, however, as the fact is disputed, we shall only grant a mandamus to the justices, commanding them to examine whether reasonable verbal notice has been given, and in that case to enter continuances and hear the appeal. Rule accordingly." *See Vol. I. tit.* "Appeal," p. 115.

Where a statute requires reasonable notice, it does not necessarily mean that the notice should be in writing.

Certiorari.

By stat. 12 *G*. 2. *c*. 28. § 6. And no such conviction or judgment shall be set aside for want of form in case the facts be proved, nor be removable by *certiorari*, until judgment and determination be given and made at such sessions.

18 G.2. c.34. Witnesses.

And by stat. 18 *G*. 2. *c*. 34. § 4, 5. Any person may be summoned as a witness (other than the party accused) notwithstanding his having played, betted, or staked at any prohibited game; and in case he neglect to appear, or refuse to give evidence, he shall forfeit 50*l*., to be levied by distress by warrant of the justice issuing such summons; and for want of sufficient distress, he shall be committed to gaol for six months. Vide *ante*, p. 663.

46 G.3. c.148.

Stat. 46 *G*. 3. *c*. 148. § 59. Enacts, that all pecuniary penalties for any offence against any law touching or concerning lotteries,

(*a*) The act says justices, but probably it meant justice.

shall be applied to the use of H. M., and it shall not be lawful for any person to commence, &c. any action or information, for the recovery of any pecuniary penalty inflicted by any of the laws touching or concerning lotteries, unless the same be commenced and prosecuted, in the name of H. M.'s attorney-general in the court of exchequer at *Westminster*, if such offence be committed in *England*, or in the name of H. M.'s attorney-general in the court of exchequer at *Dublin*, if such offence shall be committed in *Ireland*, or in the name of H. M.'s advocate-general in the court of exchequer in *Scotland*, if such offence shall be committed in *Scotland*, and all proceedings otherwise are declared to be void.

And by § 64. stat. 27 *G*.3. *c*. 1. is repealed.

" *Touching and concerning Lotteries.*"—Quære, Whether the above statute extends to any other than *State Lotteries?* *In R.* v. *Liston*, 5 *T. R.* 388., it was decided, that stat. 27 *G*. 3. *c*. 1. which contained a provision somewhat similar to stat. 46 *G*. 3. *c*. 148. § 59., did not repeal the power over games of chance or lotteries prohibited by stat. 12 *G*. 2. *c*. 28.

Insuring in the lottery is not gaming within stat. 5 *G*. 2. *c*. 30. § 12. which will prevent a bankrupt's certificate being allowed. 1 *H. Blac.* 29.

By stat. 42 *G*. 3. *c*. 119. § 1. All games or lotteries called *Little Goes*, are declared common and public nuisances and against the law. 42 G. 3. c. 119. Little goes.

§ 2. No person or persons whatsoever shall publicly or privately keep any office or place to exercise, keep open, show, or expose to be played, drawn, or thrown, at or in, either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance, or device whatsoever, any game or lottery called a *Little Goe*, or any other lottery whatsoever not authorized by parliament, or shall knowingly suffer to be exercised, kept open, shown, or exposed to be played, drawn, or thrown at or in, either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance, or device whatsoever, any such game or lottery, in his or her house, room, or place, upon pain of forfeiting, for every such offence, the sum of 500*l*., to be recovered in the court of exchequer, at the suit of the attorney-general, and to be to the use of H. M.; and every person so offending shall be deemed a rogue and vagabond within the meaning of 17 *G*. 2. *c*. 5. (*a*), and shall be punishable accordingly. Persons keeping any office or place for any game or lottery not authorized by law, &c. shall forfeit 500*l*. and be deemed rogues and vagabonds within the meaning of stat. 17 G. 2. c. 5.

§ 3. Every person offending against this act in manner hereinbefore mentioned, against whom no information shall have been made as aforesaid, shall be deemed a rogue and vagabond, within the true intent and meaning of stat. 17 *G*. 2. *c*. 5.; and also of stat. 27 *G*. 3. *c*. 1. (*a*); and shall be punishable according to the said acts and this act. Persons so offending, against whom no such information shall have been made, shall be punished as rogues and vagabonds.

§ 4. Upon complaint or information made upon oath before any justices of the peace, of any offence committed against this act in any house or place within the jurisdiction of any such justice, whereby any of the offenders may be liable to punishment as rogues and vagabonds, it shall be lawful for the said justice, if he

(*a*) N. B. Stat. 17. *G*. 2. *c*. 5. is repealed by stat. 5 *G*. 4. *c*. 83., and stat. 27 *G*. 3. *c*. 1. by stat. 46 *G*. 3. *c*. 148. § 64. See *tit*. Vagrant.

42 G.3. c.119.

Justices on information may authorize persons to break open the doors of places where such offences shall have been committed, and apprehend offenders and others assisting them, and carry them before a justice.

shall judge it reasonable, by special warrant under his hand and seal, to authorize and empower any person or persons, by day or by night, (but if in the night-time, then in the presence of a constable or other lawful officer of the peace, who are hereby required to be aiding or assisting therein,) to break open the doors or any part of such house or place where such offence shall have been committed, and to enter into such house or place, and to seize and apprehend all such offenders and all other persons who shall be discovered in such house or place, and who shall have knowingly aided or assisted, or been anyways concerned with any such offender or offenders in committing such offence, and to convey them before any justice or justices of the peace of the county, riding, division, city, liberty, or place wherein such persons shall be so apprehended, to be dealt with according to law as aforesaid; and all persons who shall be discovered in such house or place knowingly aiding, assisting, or anyways concerned with such offender or offenders in the carrying on any transactions respecting the said little goes or lotteries, or either of them, shall be deemed rogues and vagabonds, and punishable in like manner as is directed by the said recited act of the 17 *G.* 2. *c.* 5. (*a*); and it shall be lawful for the officer or officers having the execution of such warrant, and all other persons acting in his or their aid or assistance, to stop, arrest, and detain all and every the person and persons so discovered in such house or place, and to convey the said person and persons before such justice of the peace as aforesaid; and if any person shall forcibly obstruct, oppose, molest, or hinder any such officer, or others acting in his or their aid, or assistance in the due execution of their duty, or in the due entering into such house or place, or in the seizing, detaining, or conveying before such justice any such offenders, or other persons as aforesaid, every such person so obstructing, opposing, molesting, or hindering as aforesaid, shall be deemed an offender against law and the public peace, and the court before whom any such offender shall be tried and convicted shall and may order such offender to be fined, imprisoned, and publicly whipped, as in their discretion shall be thought fit; and all persons, although not discovered in such house or place as aforesaid, who shall employ or cause to be employed any person or persons in carrying on any of the transactions aforesaid, or in aiding or assisting any such person or persons, shall be deemed rogues and vagabonds, and shall be punishable in like manner as is directed by stat. 27 *G.* 3. *c.* 1. (*b*)

Penalty for obstructing persons in the execution of their duty.

Persons employing others, though not discovered in the premises, to be deemed rogues and vagabonds.

Persons agreeing to pay any sum, or to deliver any goods, &c. on any event relative to such game or lottery, or publishing any proposal, shall forfeit 100*l*.

§ 5. "No person or persons whatever shall, on or under any pretence, device, form, denomination, or description whatsoever, promise or agree to pay any sum or sums, or to deliver any goods, or to do or forbear doing any thing for the benefit of any person or persons, whether with or without consideration, on any event or contingency relative or applicable to the drawing of any ticket or tickets, lot or lots, numbers or figures, in any such game or lottery, or to publish any proposal for any of the purposes aforesaid; and if any person or persons shall offend in any of the matters aforesaid, he, she, or they shall, for every offence, forfeit and pay the sum of 100*l*."

(*a*) Repealed by stat. 5 *G.* 4. *c.* 83. See *tit.* Vagrant.

(*b*) N. B. This act is repealed by the 46 *G.* 3. c. 148. § 64.

§ 6. It shall be lawful for any person whatever to apprehend, on the spot, any person or persons so offending, and to convey or cause to be conveyed before any justice of the peace residing near the place where such offence shall be committed, the person or persons so apprehended, to be proceeded against under this act; and when any person or persons shall be apprehended or brought before any justice for any such offence, it shall be lawful for such justice to proceed to examine into the circumstances of the case, and upon due proof upon oath or solemn affirmation of any such offence committed against this act, to give judgment or sentence accordingly; and where the party accused shall be convicted of such offence, and such penalty shall not be immediately paid, to commit such offender to prison for any space of time not exceeding six calendar months, nor less than one calendar month, without bail or mainprize, and without appeal, or until such penalty shall be satisfied; and every such penalty, when paid upon conviction, shall go and be applied, one third thereof to H. M., one third thereof to the use of the informer or informers, and the other third to the person or persons apprehending or securing such offender or offenders.

42 G. 3. c. 119. Offenders may be apprehended on the spot by any person, and carried before a justice, who shall on the penalty not being paid, commit the offender.

Application of the penalty.

§ 7. All provisions, powers, authorities, &c. &c. contained in stat. 27 *G.* 3. *c.* 1. shall extend to all the provisions of this act.

§ 8. Any sheriff's officer or other person sued or prosecuted for any thing done by virtue of this act, may plead the general issue, and give this act and the special matter in evidence; and if a verdict shall pass for the defendant, or the plaintiff shall discontinue his action or prosecution, or be nonsuited, such defendant shall have treble costs.

General issue.

Treble costs.

By stat. 9 *G.* 1. *c.* 19. § 4, 5. If any person shall, by virtue or colour of any grant or authority from any foreign prince or state, set up, continue, or keep, or cause or procure to be set up, continued, or kept, any lottery, or undertaking in the nature of a lottery, under any denomination whatsoever, or shall make, print, or publish, or cause, &c. any proposal for any such lottery or undertaking; or shall sell or dispose of any ticket in any foreign lottery; and shall be convicted thereof, on oath of one witness, before two justices where the offence shall be committed, or the offender shall be found, he shall (over and above any penalties by former acts against unlawful lotteries) forfeit 200*l.*, one third to the king, one third to the informer, and one third to the poor, to be levied by distress and sale, by warrant of such justices; and shall also by them be committed to the county gaol for one year, and from thence till the said sum of 200*l.* be fully paid: Provided, that persons aggrieved may appeal to the next quarter sessions; whose judgment shall be final.

9 G. 1. c. 19. Foreign lotteries.

Appeal.

And by stat. 6 *G.* 2. *c.* 35. § 29, 30. If any person shall sell, procure, or deliver any ticket, receipt, chance, or number, or division in any foreign or pretended foreign lottery, or in any class, part, or division thereof, or in any undertaking in the nature of a lottery, or shall sell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or shall receive or cause to be received any money for any such ticket, receipt, chance, or number, or in consideration of any money to be paid in case any ticket or number in any foreign or pretended foreign

6 G. 2. c. 35. Selling or procuring chances in foreign lotteries.

6 G. 2. c. 35. lottery, or any class, part, or division thereof, shall prove fortunate; and shall be convicted thereof in the courts at *Westminster*, or on the oath or affirmation of one witness before two justices where the offence shall be committed, or the offender shall be found; he shall forfeit 200*l.*, one third to the king, one third to the informer, and one third to the poor where the offence shall be committed; the same (in case of conviction before two justices) to be levied by distress and sale by warrant of such justices; and shall also be committed to the county gaol for one year, and from thence till the 200*l.* be paid; provided, that persons aggrieved may appeal to the next quarter sessions; and the judgment there to be final.

Appeal.

A.

A. Form of Notice by two Inhabitants to the Constable, and to the Overseers of the Poor, to ground a Prosecution on stats. 25 *G.* 2. *c.* 36. and 58 *G.* 3. *c.* 70. § 7.

To *A. C.* constable of the parish of ——, in the county of ——, and also to *A. O.* and *B. O.*, overseers of the poor of the said parish.

WE A. B. *and* C. D. *two of the inhabitants of the said parish of* ——, *paying scot and bearing lot therein, do hereby give you and each of you notice, that* A. I. *of the said parish of* —— *innkeeper, doth keep a bawdy-house,* [or *gaming-house,* or *other disorderly house,* as the case may be,] *to wit, at his dwelling-house, in the said parish, called and known by the name of the* —— *inn; and we do hereby also require you, the said constable and overseers of the poor, forthwith to go with us before some one of his majesty's justices of the peace in and for the said county of* ——, *to the intent that such proceedings may be had for the prosecution of the said* A. I. *for the said offence, as in and by the statute made and passed in the twenty-fifth year of the reign of the late king* George *the second, intituled "An act for the better preventing of thefts and robberies, and for regulating places of public entertainments, and punishing persons keeping disorderly houses," are directed and required.*

Witness our hands, this —— *day of* ——, *&c.*

A. B.
C. D.

B.

B. Affidavit of the Truth of such Notice before a Justice of the Peace.

—— to wit. } A. B. *and* C. D. *severally make oath and say, that they severally believe the contents of the notice hereunto annexed [a copy of which they have caused to be served on* A. C. *constable of the parish of* ——, *and also upon* A. O. *and* B. O., *overseers of the poor of the said parish of* ——, *in the said county,] to be true in substance and matter of fact.*

A. B.
C. D.

Sworn by A. B. *and* C. D. *this* —— *day of* ——, *in the year of our Lord* ——, *before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the county of* ——. } J. P.

C. Form of Recognizance to give material Evidence. C.

——— to wit. } *BE it remembered, that* A. B. *of the parish of*——, *in the said county, mercer, and* C. D. *of the same, grocer, on the* —— *day of*———, *in the year of our Lord*———, *at* ——— *aforesaid, in the county aforesaid, came before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, and severally acknowledged themselves to be indebted to our sovereign lord the king in the sum of twenty pounds each.*

Whereas the above bounden A. B. *and* C. D. *have given notice in writing to* A. C., *constable of the said parish of*———, *and also to* A. O. *and* B. O., *overseers of the poor of the said parish of*———, *that one* A. I. *of* ——— *aforesaid, innkeeper, doth keep a bawdy-house* [*gaming-house, or other disorderly house*]: *Now the condition of the above obligation is such, that if the above bounden* A. B. *and* C. D. *shall give or produce material evidence against the said* A. I. *for the said offence, at the next general quarter session of the peace to be held in and for the said county, then this recognizance to be void, otherwise of force.*

Acknowledged before me,

J. P.

D. Constable's or Overseers' Recognizance to prosecute. D.

——— to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at* ———, *in the said county,* A. C. *one of the constables of the parish of* ——— *aforesaid,* [or A. O. *and* B. O., *overseers of the poor of the said parish of*———, as the case may be,] *personally came before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, and acknowledged himself* [or *themselves*] *to be indebted to our sovereign lord the king in the penal sum of*——— *pounds.*

Whereas A. B., *and* C. D., *two of the inhabitants of the said parish of* ——— *have given notice in writing to the above bounden* A. C., *constable of the said parsh of*———, [or A. O. *and* B. O., *overseers of the poor of the parish of*———, as the case may be,] *that* A. I. *of* ——— *aforesaid, in the county aforesaid, innkeeper, doth keep a bawdy-house,* [*gaming-house, or other disorderly house,*] *to wit, in the said parish of* ——— *and county of*———, *and having severally made affidavit of their belief in the truth of the contents of the said notice, have also severally entered into a recognizance in the penal sum of* ——— *pounds each before me, the undersigned justice, on condition that they shall give or produce material evidence against the said* A. I. *for the said offence. Now the condition of this present recognizance is such, that if the above bounden* A. C. *or* A. O. *and* B. O. *do and shall prosecute with effect the said* A. I. *for the said offence, then this recognizance to be void, otherwise of force.*

Acknowledged before me,

J. P.

E.

E. Warrant to apprehend the Keeper of a disorderly House.

To the constables of the parish of ——, in the said county.

——— } to wit. } *WHEREAS* A. B. *and* C. D., *two of the inhabitants of the parish of* ——, *in the county of* ——, *paying scot and bearing lot within the said parish, have given notice in writing to* A. C., *constable of the said parish, and also to* A. O. *and* B. O., *overseers of the poor of the said parish, that* A. I. *of the said parish, inn-keeper, doth keep a bawdy-house [gaming-house, or other disorderly house,] in the said parish of* —— ; *and have also this day severally made affidavit before me one of his majesty's justices of the peace in and for the said county, that they believe the contents of the said notice to be true; and have also severally entered into a recognizance in the penal sum of twenty pounds each, on condition to give or produce material evidence against the said* A. I.: *These are therefore to command you forthwith to bring the said* A. I. *before me at this place, to be bound over to appear at the next general quarter sessions of the peace to be held in and for the said county, there to answer to such bill of indictment as shall be found against him for such offence. Given under my hand and seal, &c.*

F.

F. Allowance of Constable's Expences in the Prosecution by two Justices, and Order on Overseers to pay them.

——— } to wit. } *WHEREAS* A. C., *constable of the parish of* ——, *in the said county, hath this day made oath before us,* J. P. *and* M. N. *esquires, two of his majesty's justices of the peace in and for the said county, that he hath truly and bonâ fide expended the sum of* —— *in the prosecution of one* A. I. *for keeping a bawdy-house [gaming-house, or other disorderly house,] at* —— *aforesaid, in pursuance of the condition of the said* A. C.'s *recognizance: Now we, the said justices, do hereby ascertain and allow the said* A. C. *the said sum of* —— *as and for the reasonable expences of the said prosecution, and we do hereby require the overseers of the poor of the said parish of* —— *forthwith to pay the said* A. C. *the said sum of* ——.

In witness whereof we have hereunto set our hands at —— *aforesaid, in the county aforesaid, this* —— *day of* ——, *in the year of our Lord* ——.

J. P.
M. N.

Gaols and Houses of Correction.

Breaking Gaol. See Vol. III. tit. **Prison breaking.**

Sect. I. *Repeal, in Whole or in Part, of certain Acts by Stat.* 4 G. 4. c. 64.

II. *To what Prisons Stat.* 4 G. 4. c. 64. — 5 G. 4. c. 85. *extend.*

III. *Who shall have the keeping of Gaols.*
[14 Ed.3. stat.1. c.10.—19 H. 7. c.10.—3 G.1. c.15.]

IV. *How many Gaols and Houses of Correction to be in each County, &c.*
[4 G. 4. c. 64.]

V. *Building and repairing Gaols, &c.*
[4 G. 4. c. 64.]

VI. *Arrangement in the Construction of Prisons for classification, &c.*
[4 G. 4. c. 64. — 5 G. 4. c. 85.

VII. *Expenditure incurred in building, &c. provided for.*
[4 G. 4. cc. 63, 64. — 5 G. 4. c. 85.]

VIII. *Powers given to sell and convey Lands, &c.*
[4 G. 4. c. 64. — 5 G. 4. c. 85.]

IX. *Ascertaining to what Class or Classes each Prison to be applicable.*
[4 G. 4. c. 64. — 5 G. 4. c. 85.]

X. *Benefactions and Gifts — how to be applied and examined into.*
[4 G. 4. c. 64.]

XI. *Rules and Regulations to be observed in all Prisons.*
[55 G. 3. c. 50. — 56 G. 3. c. 116. — 4 G. 4. c. 64.]

XII. *Spirituous Liquors, carrying into, or selling in Prisons.*
[4 G. 4. c. 64]

XIII. *Officers of the Prisons — their Powers and Duties, &c.*

(*a*) *Visiting Justices.*
[4 G. 4. c. 64.]

(*b*) *Sheriff.*
[4 G. 4. c. 64.]

(*c*) *Keepers, Matrons, Turnkeys.*
[4 G. 4. c. 64.]

(*d*) *Chaplains.*
[4 G. 4. c. 64.]

(*e*) *Surgeons.*
[4 G. 4. c. 64.]

(*f*) *Annual Statement to Secretary of State, of the Establishment of Officers and Servants.*
[5 G. 4. c. 85.]

XIV. *Prisoners.*

(*a*) *Commitment, Receiving.*
[4 G. 4. c. 64.]

(*b*) *Employment.*
[4 G. 4. c. 64.—5 G. 4. c. 18. 85.

(*c*) *Delivery — Supply on Discharge.*
[4 G. 4. c. 64. — 5 G. 4. c. 85.]

(*d*) *Escape or Attempt to Escape.*
[4 G. 4. c. 64.]

(*e*) *Punishment of Refractory.*
[4 G. 4. c. 64.]

(*f*) *Removal in certain Cases.*
[31 G. 2. c. 2.—24 G. 3. sess. 2. c. 56.—4 G. 4. c. 64.]

XV. *Annual Report to Secretary of State.*
[4 G. 4. c. 64.]

XVI. *Fines and Penalties. — Recovery and Application. — Appeal.*
[4 G. 4. c. 64.]

XVII. *Saving of Rights.*
[4 G. 4. c. 64.]

XVIII. *Debtors. — Arrest. — Confinement. — Treatment.*
[32 G. 2. c. 28. — 4 G. 4. c. 64.]

XIX. *Prisons of the King's Bench and Marshalsea.*
[53 G. 3. c. 113.]

XX. *Of County Gaols in Counties divided into Ridings and Divisions; and of Sessions for such Gaols.*
[5 G. 4. c. 12.—c. 85.]

XXI. *Contracts by Justices having Charge of any Gaol or House of Correction in any City, Town, Borough, Port, or Liberty, with the Justices having Charge of any Gaol of the adjacent County, Riding, &c. for Support in such last-mentioned Gaol of Prisoners committed thereto from such City, &c.*
[5 G. 4. c. 85.]

§ I. Repeal, in Whole or in Part, of certain Acts, by Stat. 4 *G.* 4. *c.* 64. § 1.

By stat. 4 *G.* 4. *c.* 64., intituled "*An act for consolidating and amending the laws relating to the building, repairing, and regulating of certain gaols and houses of correction in* England *and* Wales," § 1., after reciting, that whereas the laws now existing relative to the building, repairing, and regulating of gaols and houses of correction in *England* and *Wales*, are complicated, and have in many cases been found ineffective: and whereas it is expedient that such measures should be adopted, and such arrangements made in prisons, as shall not only provide for the safe custody, but shall also tend more effectually to preserve the health and to improve the morals of the prisoners confined therein, and shall insure the proper measure of punishment to convicted offenders: and whereas due classification, inspection, regular labour and employment, and religious and moral instruction, are essential to the discipline of a prison, and to the reformation of offenders: and whereas the present laws directing the separation, superintendence, employment, and instruction of prisoners, require to be amended and enlarged, and to be more uniformly and strictly carried into effect, and it is therefore expedient that the most useful provisions contained in the several statutes and acts, and parts of statutes and acts, hereinafter mentioned, should be consolidated, and that some new provisions should be added thereto; it is enacted, that from and after the commencement of this act (*a*), the several statutes and acts, and parts of statutes and acts, following, shall be repealed, so far as relates to such gaols or prisons, or houses of correction, as this act shall extend to; (that is to say,) so much of stat. 1 *Ed.* 3. *st.* 1. *c.* 7. as relates to enquiry to be made of gaolers, which by duress compel prisoners to appeal; 4 G.4. c.64. Recited acts in part or in whole, so far as relates to prisons, to which this act shall extend, repealed. 1 Ed.3. st.1. c.7.

And also so much of stat. 4 *Ed.* 3. c. 10. as relates to sheriffs and gaolers receiving offenders without taking any thing; 4 Ed.3. c.10.

And also so much of stat. 14 *Ed.* 3. stat. 1. *c.* 10. as relates to the punishment of a gaoler compelling a prisoner by duress to become an approver; 14 Ed.3. st.1. c.10.

And also so much of stat. 7 *J.* 1. *c.* 4. as relates to the providing houses of correction, to the appointment, authority, and allowance of the governor, and to his accounting to justices for persons committed to his custody; 7 J.1. c.4.

And also so much of stat. 19 *C.* 2. *c.* 4. as relates to the providing stocks for setting such prisoners to work, and to their removal in sickness; 19 .2. c.4.

And also so much of stat. 22 & 23 *C.* 2. *c.* 20. as relates to prisoners being allowed to send for victuals and other necessaries, and to fees and charities, and to the separation of felons and debtors; 22 & 23 C.2. c.20.

And also stat. 11 & 12 *W.* 3. *c.* 19., any thing in stat. 6 *G.* 1. *c.* 19. to the contrary in any wise notwithstanding; 11 & 12 W.3. c.19. (although made perpetual by 6 G.1. c.19.)

(*a*) By § 78. it is enacted, that this act, and the several clauses, matters, and things therein contained, shall commence and take effect from and after the first day of September, 1823, and not sooner.

2 G.2. c.22. And also so much of stat. 2 *G.* 2. *c.* 22. as relates to prisoners being allowed by keepers of prisons and gaols to send for victuals and other necessaries, and to the taking of fees, and the making and hanging up tables thereof, and to enquiries concerning the same, and to the hearing of complaints of extortion against gaolers, and examining into gifts and legacies for the benefit of poor prisoners, and hanging up tables thereof;

14 G.2. c.33. And also so much of stat. 14 *G.* 2. *c.* 33. as relates to repairing, enlarging, and building houses of correction, and to buying houses and lands for that purpose;

16 G.2. c.31. And also so much of stat. 16 *G.* 2. *c.* 31. as relates to the escape of prisoners from any gaol or prison to which this act extends;

17 G.2. c.5. And also so much of stat. 17 *G.* 2. *c.* 5. as relates to the erecting, enlarging, and managing houses of correction, and the finding (*a*) or turning out masters of them for misbehaviour;

(*a*) *Sic.* Qu. fining.

24 G.2. c.40. And also so much of stat. 24 *G.* 2. *c.* 40. as relates to the retailing of spirituous liquors in gaols, prisons, or houses of correction, to the carrying of liquors into the same, to the search for such liquors, and to the hanging up of a copy of certain clauses of the said act, in such gaols, prisons, or houses;

32 G.2. c.28. And also so much of stat. 32 *G.* 2. *c.* 28. as relates to prisoners being allowed to send for victuals and other necessaries, and to the settling, signing, reviewing, enrolling, and hanging up of tables of fees, rates, and benefactions, and rules for the government of gaols and prisons;

13 G.3. c.58.
14 G.3. c.59.
22 G.3. c.64.
24 G.3. stat.2. c.54.
24 G.3. stat.2. c.55.
29 G.3. c.67.

And also stats. 13 *G.* 3. *c.* 58.
14 *G.* 3. *c.* 59.
22 *G.* 3. *c.* 64.
24 *G.* 3. st. 2. *c.* 54.
24 *G.* 3. st. 2. *c.* 55.
and
29 *G.* 3. *c.* 67.
} *in toto.*

31 G.3. c.46. And also stat. 31 *G.* 3. *c.* 46., except as it relates to the imprisonment and employment in hard labour, in the common gaol of the county, of prisoners sentenced to transportation, or to whom the royal mercy shall be extended, on condition of transportation;

55 G.3. c.48.
58 G.3. c.32.

And also stats. 55 G. 3. *c.* 48.
and
58 *G.* 3. *c.* 32.
} *in toto.*

Exception. Save and except so far far as the said acts, or any of them, repeal any former act or acts, or any clause, matter, or thing therein; and also save and except as to any proceeding for the punishment of any person for any offence which shall, before the commencement of this act, (*Sept.* 1st, 1823,) have been committed; and as to any presentment before that time made by any justice of the peace or grand jury; and as to any appointment before that time made by any officer or other person, to perform any duties under the said recited acts, or any of them; and as to any rules and regulations, acts and deeds before that time lawfully established, made, or done, under or by virtue of any one or more of the said acts; and as to the fulfilment of any contracts or agreements before that time lawfully made, under or by virtue of the said recited acts, or any of them.

§ II. To what Prisons Stats. 4 *G.* 4. &c. extend.

[4 G. 4. c. 64. § 2. 76.—5 G. 4. c. 85. § 9. 27.]

By stat. 4 *G.* 4. *c.* 64. § 2. It is enacted, that, from and after the commencement of this act, there shall be maintained, at the expence of every county in *England* and *Wales, one common gaol* (*a*); and at the expence of every county not divided into ridings or divisions, and of every riding or division of a county (having several and distinct commissions of the peace, or several or distinct rates in the nature of county rates, applicable by law to the maintenance of a prison for such division,) in *England* and *Wales*, at least *one house of correction;* and one gaol and one house of correction shall be maintained in the several cities, towns, and places mentioned in the schedule marked (A.) annexed to this act (*b*); and the regulations and provisions contained in this act shall extend, in manner hereinafter mentioned, to every such gaol and house of correction, maintained at the expence of such county, riding, division, city, town, or place, and to the several gaols and houses of correction in the cities of *London* and *Westminster*.

In each county, riding, &c. and in each city, mentioned in schedule (A.) annexed, there shall be one gaol and one house of correction.

This act shall extend to such gaols, and to the prisons in London and Westminster.

By § 76., and by stat. 5 *G.* 4. *c.*85. § 27., Nothing in these acts contained shall extend to the royal hospital of *Bethlehem* and prison of *Bridewell*, nor to the K. B. or *Fleet* prison, or to the prison of the *Marshalsea* or palace courts, the general penitentiary at *Milbank*, nor to the general penitentiary at *Gloucester;* nor (by stat. 4 *G.* 4. *c.* 64. § 76. only) to any ships or vessels provided in any port or navigable river for the reception and employment of convicts sentenced to transportation; nor to exempt any such convicts from any punishment or discipline to which they were liable by law before the passing of this act.

5 G. 4. c. 85. Not to extend to certain prisons, hulks, &c.

§ III. Who shall have the keeping of Gaols.

[14 Ed. 3. st. 1. c. 10.—19 H. 7. c. 10.—3 G. 1. c. 15.]

The gaol itself is the king's, *pro bono publico*. 2 *Inst.* 589. But by stat. 14 *Ed.* 3. *st.* 1. *c.* 10., and 19 *H.* 7. *c.* 10., it is ordained and enacted, " that every sheriff within every county within this realm of *England* have the custody, rule, keeping, and charge of every the king's common gaols, prisons, and prisoners in the same, in every of the said counties where he is sheriff, during the time of his office, except all gaols whereof any person or persons, spiritual or temporal, or body corporate, have the keeping of estate of inheritance, or by succession.

The sheriff has the keeping of gaols.

And, therefore, by stat. 14 *Ed.* 3., *st.* 1. *c.* 10. the sheriffs shall put in such keepers for whom they will answer.

Sheriffs to put in keepers.

But by stat. 3 *G.* 1. *c.* 15. § 10. None shall buy the office of gaoler, on pain of 500*l.*, half to the king, and half to him that shall sue.

The office not to be bought.

(*a*) As to county gaols in counties divided into ridings and divisions, and as to gaol sessions for such gaols, see stat. 5. G. 4. c. 12. *post.* § xx.

(*b*) By stat. 5 G. 4. c. 85. § 9. so much of stat. 4 G. 4. c. 64. as relates to the cities of *Canterbury, Lichfield*, and *Lincoln* is repealed.

A gaoler *de facto* is as much punishable for a misdemeanor in his office as if he was a rightful gaoler. 2 *Haw. c.* 19. § 23.

When a sheriff quits his office, the custody of the county gaol can only belong to his successor. 1 *Ld. Raym.* 136.

§ IV. How many Gaols, &c. to be in each County, &c.

[4 G. 4. c. 64. § 3. 8. 48. *Vide* § 2. *ante*, 681.]

4 G. 4. c. 64. Houses of correction already established may be retained to be used for particular classes of prisoners.

By stat. 4 *G.* 4. *c.* 64. § 3. It is enacted, that where there shall have been already established, and shall be existing at the time of passing of this act, (1 *Sept.* 1823.) in any county, riding, division, city, town, or place, one or more house or houses of correction, not sufficient or capable of being made sufficient for the extended classification required by this act, it shall be lawful for the justices assembled at their general or quarter sessions, or the major part of them, if they shall so think fit, to order and direct that, in addition to the house of correction hereinbefore directed to be maintained for the purposes of this act, one or more of such houses of correction as shall be so existing as aforesaid at the time of the passing of this act, shall be continued and maintained for the reception of one or more particular class or classes, or description or descriptions of prisoners, as may be prescribed by the justices assembled at their general or quarter sessions, as directed by this act.

Where the inhabitants of any district, &c. shall be contributory to the support and maintenance of the house or houses of correction of the county, &c. in which such district, &c. is situate, it is not necessary to build a house of correction for such district, &c.

§ 8. It is enacted, that in all cases where the inhabitants of any district, city, town, or place (mentioned in schedule A.) are or shall be contributory to the support and maintenance of the house or houses of correction of the county, riding, or division in which such district, city, town, or place is situate, it shall not be necessary or required that any other house of correction shall be built or maintained in or for such district, city, town, or place; and the inhabitants of such district, city, town, or place, shall not be compelled or compellable to the payment of any rate, or sum of money whatever for the building or maintaining of any other house of correction in or for such district, city, town, or place.

Gaols though locally situate out of the county, &c. shall be deemed part of the county, &c. and subject to the jurisdiction of the justices of the county, &c.

§ 48. Every gaol, house of correction, or other prison, for any county, riding, or division, county of a city, or county of a town, or for any town, liberty, soke, or place, not being a county, but having an exclusive jurisdiction for the trial of felonies or misdemeanors committed therein, which is now built or shall hereafter be built, together with the ground whereon the same shall stand, and every court, yard, building, and appurtenance thereunto belonging, with every addition that shall hereafter be made thereto, which said gaol, house of correction, or other prison, court, yard, building, appurtenance, or addition, is or shall be situate within the limits of any other county, riding, or division, county of a city, county of a town, or of any other town, liberty, soke, or place, not being a county, but having an exclusive jurisdiction for the trial of felonies or misdemeanors committed therein, shall be deemed and taken to be part of the county, riding, or division, county of a city, county of a town, or of the town, liberty, soke, or place for which the same shall be used as a gaol, house of correction, or other prison, so long as the same shall be so used, and no longer; and the justices of the peace, mayors, jurats, coroners, constables, and other officers of such county, riding, or division,

county of a city, county of a town, or of such town, liberty, soke, or place, for which the same shall be used as a gaol, house of correction, or other prison, shall during the time that the same shall be so used, have as full power and authority therein as they would have if the same was not situate within the limits of such other county, riding, or division, county of a city, county of a town, or of such town, liberty, soke, or place; any charter, law, or usage to the contrary thereof in any wise notwithstanding. 4 G. 4. c. 64.

§ V. Building and repairing Gaols, &c.

[4 G. 4. c. 64. § 45, 46, 47. 50.]

On report or presentment of insufficiency of prisons, justices may contract for enlarging, building, or repairing the same.

By stat. 4 *G.* 4. *c.* 64. § 45. It is enacted, that in case it shall appear at any time to the justices at any general or quarter sessions of the peace, holden in any county or riding, or in any such division of a county as aforesaid, or in any district, city, town, or place to which this act shall extend, by any report made under the provisions of this act, of the state of any prison, to such justices at such sessions, or by any presentment at any time made by the grand jury at the assizes, great session, session of gaol delivery, or session of the peace, to be holden for any such county, riding, division, district, city, town, or place, or by any presentment at any time made by any two or more justices of the peace in and for the same, and laid before the justices at such general or quarter sessions of the peace, that any gaol or house of correction, to which this act shall extend, within such county, riding, division, district, city, town, or place, is insufficient, inconvenient, or in want of repair, or otherwise inadequate to give effect to the rules and regulations prescribed by this act, or that there is a necessity for the erection of any new gaol or house of correction; the justices assembled at such general or quarter sessions, or at the general or quarter sessions, or adjournment thereof, next after any such report or presentment made, shall and they are hereby required to cause notice to be given, three times, at least, in some public newspaper circulating within such county, riding, division, district, city, town, or place, of such report or presentment having been laid before such sessions, and of their intention to take the same into consideration at the next ensuing or some subsequent general or quarter sessions, or adjournment thereof; and in case the justices at such last-mentioned sessions, or the major part of them, shall resolve that such report or presentment is well founded, then it shall and may be lawful for such justices, and they are hereby required, at the sessions mentioned in such notice, or at a subsequent sessions, or adjournment thereof, with the like notice, to take such measures, either by contract or otherwise, as shall appear to them to be requisite and proper, for the altering, enlarging, or repairing, or for building or rebuilding any such gaol or house of correction, regard being had, in the case of contracts, to the reasonableness of the price and responsibility of the contractors; and every contractor shall give sufficient security for the due performance of his contract to the clerk of the peace, or town clerk, for the county, riding, division, district, city, town, or place, to be inspected at all reasonable times by any justices, or by any other

Justices shall give notice in some newspaper of the county, &c.

4 G.4. c.64. person contributing to the rate of such county, riding, division, district, city, town, or place, without fee or reward.

Justices may purchase houses, &c. for the purpose of building or enlarging any prison.

§ 46. After such presentment and notice, it shall be lawful for the justices in general or quarter sessions assembled, or the major part of them, and they shall have full power and authority to purchase any houses, buildings, lands, tenements, hereditaments, ways, watercourses, and other easements, for the purpose of enlarging or rendering commodious, or for the building or rebuilding any prison, and to direct the property so purchased to be conveyed to such person or persons as the said justices shall think fit, in trust for the purpose aforesaid, under the regulations and directions in this act contained; and such houses, buildings, lands, tenements, hereditaments, ways, watercourses, or other easements, shall, when enclosed and added to such prison, be deemed and taken to be parts of such prison, and to be within the county, riding, division, city, district, town, or place, to the use of which such prison may be applied, to all intents and purposes whatever, so long as the same shall be used by such county, riding, division, city, district, town, or place for the purpose of this act, and no longer.

If prison becomes unsafe or inconvenient, two justices may order repairs, and shall report to the sessions.

§ 47. If it shall at any time happen, that any such gaol or house of correction shall become unsafe or unfit for the custody of the prisoners confined therein, between the several times of holding the general or quarter sessions, it shall and may be lawful for any two or more justices (one of whom shall be a visiting justice for the prison) for the county, riding, division, district, city, town, or place, to order such repairs and alterations to be immediately done and made, as may be necessary and sufficient for the safe and proper custody of such prisoners, and the upholding of such prison; and such justices shall report the same to the next court of general or quarter sessions to be holden for such county, riding, division, district, city, town, or place; and such court is hereby authorized to order the payment of such sum or sums of money as shall have been properly expended in such repairs or alterations as aforesaid.

Justices may remove the site of prisons, upon express presentment that the old site was unfit and inconvenient.

§ 50. In case it shall be expressly presented that the place wherein any old prison is situated is improper, and that the prison ought to be removed to some other part of the county, riding, division, district, city, town, or place, or that a new gaol or house of correction is necessary, the justices in their general or quarter sessions assembled shall take such presentment into their consideration, and if it shall be resolved by the justices assembled at two successive general or quarter sessions, or the major part of them, that such old prison ought to be removed, or that such new prison is necessary, it shall be lawful for the justices so assembled to contract for the building of a new gaol or house of correction in any part of the county, riding, division, district, city, town, or place which they may deem most eligible; and whenever the site of any prison shall be changed, and the old site shall be no longer necessary for the purpose of a prison, it shall be lawful for the justices so assembled to make sale thereof, (unless it be the property of the king's majesty, his heirs and successors, or of some private individual,) for the best price that can be gotten for the same, and to direct the purchase money to be paid to the treasurer of such county, riding, division, district, city, town, or place,

and to direct the trustee of such lands and hereditaments, his heirs, executors, or administrators (according to the tenure thereof), and the clerk of the peace, or town clerk, to convey the inheritance of such site to the purchaser; and every such conveyance, together with the treasurer's receipt for the purchase-money, shall give a good and valid title to the purchaser; and the purchase-money shall be applied by the treasurer in aid of the rate of such county, riding, division, district, city, town, or place; and whenever the building of any court of justice is or shall be so attached to any prison, as to render it impracticable or inconvenient to repair, enlarge, improve, or rebuild the said prison, without also altering or pulling down the building of the said court, then and in such cases it shall be lawful for the justices in general or quarter sessions assembled to cause such courts to be altered or pulled down, or to be rebuilt, either on the same or on any other site, subject to the same provisions as are by this act appointed with respect to gaols.

4 G.4. c.64.

Where any courts of justice are attached to prisons, they may be altered, &c.

As to magistrates of *cities*, &c. raising money to build or repair *county* gaols or houses of correction, in order to a contract with the justices having charge of the latter, for the support of prisoners committed thereto from such cities, &c. under stat. 5 *G.* 4. *c.* 85. § 1, 2, 3. See *post*, § xxi.

Magistrates of *cities*, &c. raising money to rebuild, &c. *county* gaols.

§ VI. Arrangement in the Construction of Prisons for Classification, &c.

[Stat. 4 G. 4. c. 64. § 49.]

§ 49. In the altering, enlarging, repairing, building, or rebuilding of any gaol or house of correction under this act, the justices shall adopt such plans as shall afford the most effectual means for the security, classification, health, inspection, employment, and religious and moral instruction of the prisoners; the building shall be so constructed or applied, and the keepers' and officers' apartments so situated, as may best ensure the safety of the prison, and facilitate the controul and superintendence of those committed thereto; distinct wards, and dry and airy cells shall be provided, in which prisoners of the several descriptions and classes hereinafter enumerated may be respectively confined; and it shall be considered as a primary and invariable rule, that the male prisoners shall in all cases be separated from the female, so as to prevent any communication between them: provision shall be made for the separation of prisoners into the following classes:—

Plans for prisons shall be such as to provide separate places of confinement, classification, &c.

If a Gaol.

1st. Debtors, and persons confined for contempt of court on civil process.

2dly. Prisoners convicted of felony.

3dly. Those convicted upon trial of misdemeanors.

4thly. Those committed on charge or suspicion of felony.

5thly. Those committed on charge of misdemeanors, or for want of sureties.

If a House of Correction.

1st. Prisoners convicted of felony.

2dly. Prisoners convicted upon trial of misdemeanors.

4 G.4. c.64. 3dly. Those committed on charge or suspicion of felony.

4thly. Those committed on charge of misdemeanors.

5thly. Vagrants.

Places of confinement shall also be set apart in every gaol and house of correction for such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecutions, and such further means of classification shall be adopted as the justices shall deem conducive to good order and discipline; separate rooms shall be provided as infirmaries or sick wards for the two sexes, and as far as is practicable for the different description of prisoners; and warm and cold baths, or bathing tubs, shall be introduced into such parts of the prison as may be best adapted for the use of the several classes; proper yards shall be allotted to the different classes for air and exercise, and each class shall have the use of a privy, and be furnished with a supply of good water; a separate sleeping cell shall, if possible, be provided for every prisoner; but as the numbers may sometimes be greater than the prison is calculated to contain, under the arrangement required by this act, and as it is expedient that two male prisoners only should never be lodged together, a small proportion of cells or rooms shall be provided for the reception of three or more persons; every prison shall contain rooms and places properly fitted up for the exercise of labour and industry, and also a competent number of cells adapted to solitary confinement, for the punishment of refractory prisoners, and for the reception of such persons as may by law be confined therein; a chapel shall be provided in every prison, in such a convenient situation as to be easy of access to all the prisoners; it shall be fitted up with separate divisions for males and females, and also for the different classes; it shall be strictly set apart for religious worship, or for the occasional religious and moral instructions of the prisoners, and shall never be appropriated to or employed for any other purpose whatsoever; in cases where the justices shall deem it necessary that the chaplain should reside, either occasionally or permanently, within the prison or near to it, proper apartments shall be provided therein, or in the neighbourhood thereof, for his accommodation.

5 G.4. c.85. Classification of prisoners in counties, &c. where the whole number of wards, &c. is not provided.

By stat. *5 G. 4. c. 85.* § 10. reciting, "Whereas in some other counties and places to which stat. 4 *G.* 4. *c.* 64. extends, by reason of the small number of prisoners usually confined therein, it may not be necessary to provide the whole number of wards and airing grounds thereby required, but it is necessary to provide that in all prisons some certain means of classification should be secured;" it is enacted, "that in every prison to which the said recited act extends, except *Canterbury*, *Lichfield*, and *Lincoln*, provision shall be made for the following classification, at the least:—

"In all such gaols, the male and female prisoners shall be confined in separate wards or parts of the gaol. The male prisoners shall be divided into five classes: first, debtors, and persons committed for contempt of court on civil process: second and third, prisoners convicted, who may be put into either of these classes, as to the visiting magistrates may seem meet, reference being had to the character and conduct of the prisoners, and the nature of their offence: fourth and fifth, prisoners committed for trial, who may

also be put into either of these two classes, as to the visiting magistrates may seem meet, reference being had in like manner to the character and conduct of the prisoners, and the nature of their offence. 5 G.4. c.85.

"The female prisoners shall be divided at least into three classes: first, debtors and persons committed for contempt of court on civil process: second, prisoners convicted: third, prisoners committed for trial.

"In all such houses of correction, the male and female prisoners shall also be confined in separate wards or parts of the house. The male prisoners shall be divided into five classes: first and second, prisoners convicted, who may be put into either of such classes, as to the visiting magistrates may seem meet, regard being had to the character and conduct of the prisoners, and the nature of their offence: third and fourth, prisoners committed for trial, in all houses of correction where such prisoners are received; such prisoners may be put into either of these classes, as to the visiting magistrates may seem meet, regard being had, as already mentioned, to the character and conduct of the prisoner, and the nature of his offence: fifth, vagrants.

"In places where the gaol and house of correction are united, the male prisoners shall be divided into six classes at least:—first, debtors and prisoners committed for contempt of court on civil process: second and third, convicted prisoners: fourth and fifth, those committed for trial; such prisoners to be assigned to either of these classes of prisoners convicted or committed respectively, as to the visiting magistrates shall seem meet, regard being always had to the character and conduct of the prisoners, and the nature of their offence: sixth, vagrants.'

"The female prisoners, in each of such houses of correction, shall be divided into three classes: first and second, prisoners convicted; the prisoners to be put into either of such classes, as to the visiting magistrate shall seem meet, regard being had to their character and conduct, and the nature of their offence; vagrants shall be assigned to one or the other of these classes, as the visiting magistrates, in their discretion, may see meet: third, where females are committed to any house of correction before trial, they shall be kept in a class by themselves."

Regulations as to classification, which may be dispensed with in *Welch* counties, on application to privy council.

By § 11. reciting, "Whereas in some counties of *Wales* it may be consistent with the due classification of the prisoners, to dispense with some of the wards or airing grounds required by the said recited act and this act;" it is enacted, that if the court of quarter sessions of any county in *Wales* shall, during the present year, present a petition to the lords of H. M.'s privy council, setting forth the whole number of prisoners imprisoned in the common gaol and house or houses of correction of such county, within the last 7 years, with the causes of their imprisonment respectively, so as to exhibit in which of the classes prescribed by stat. 4 *G.* 4. *c.* 64., or this act, each such prisoner would have been included, and showing also the greatest number of such prisoners imprisoned in such gaol and house or houses of correction, at any one time in each of the said 7 years; and setting forth fully and particularly the then state of such gaol and house or houses of correction, and an estimate of the expence which would be incurred by enlarging such gaol, or such house of correction, to

G.4. c.85.

which the petition shall apply so as to admit of the whole number of wards and airing grounds required by the said act or this act, and the amount of the county rate for each of the said 7 years, and praying a dispensation with some part of the wards or other accommodations required by the said act or this act, which under the circumstances of such county may to such court appear unnecessary, it shall be lawful for the said lords of the privy council to take such petition into their consideration, and if they shall see fit, to make an order thereon, directing in what manner and to what extent it shall be sufficient for such county to comply with the provisions of the said act and this act, and making such regulations touching the same as to them shall seem meet; and such county duly complying with such order shall not be liable to be indicted, or otherwise impeached, for not further conforming itself to the regulations of the said act and this act, in regard to the extent of its prisons, or the wards into which they are divided, or the accommodation to be found therein; any thing in the said recited act or this act to the contrary notwithstanding.

As to prisoners for breach of revenue laws.

§ 12. Enacts, that any person confined in any prison to which the said recited act extends, for non-payment of any penalties incurred under the revenue laws, may be assigned to such class of convicted prisoners for whom a separate ward is therein provided, as the visiting magistrates in their discretion may think fit, regard being had to the character of the prisoner, and his or her conduct while in prison; and the reasons for assigning such prisoner to any particular class of convicts shall be reported by the visiting magistrates to the quarter sessions.

To prevent solitary confinement.

§ 13. Enacts, that where, in any prison, there shall be only one prisoner belonging to any class in the said act or herein specified, such prisoner may be assigned, with his or her own consent, to any other class of prisoners of the same sex, which the visiting magistrates in their discretion shall think fit.

§ VII. Expenditure incurred in Building, &c. provided for.

[4 G. 4. cc. 63, 64. § 54, 55. 68.]

4 G.4. c.63. On application of the quarter sessions of any county, the commissioners under recited act may make advances of money for building or repairing gaols, &c. Justices to make rates for repayment of money advanced, and assign the rates as a security.

By stat. 4 *G.* 4. *c.* 63. After reciting stat. 3 *G.* 4. *c.* 86., it is enacted, that upon the application of the major part of the justices of any county, riding, division, city, town, or place in *England*, in quarter sessions assembled, such major part to consist of five at the least, it shall be lawful for the commissioners to make advances, under the powers, authorities, provisions, and regulations of the said acts, for the building, rebuilding, enlarging, improving, repairing, or fitting up of any gaols or houses of correction in *England*, in like manner in every respect as if gaols and houses of correction had been included in the provisions of the said acts; and it shall be lawful for the justices of the peace, authorised to make rates for the repairing of any gaol or house of correction, to receive any money so advanced and to apply the same to the purposes for which such advances shall be made, and to make rates for the repayment of any money so advanced in such manner, and in such proportions, and at such times, as shall

be required by the said commissioners; and also to assign the rates so to be made as a security for the said advances, in such manner and form as the said commissioners shall direct and appoint, so as that all sums so advanced, with interest thereon at the rate specified in the recited act of 3 *G.* 4. shall be fully repaid within the period of 20 years from the advancing thereof; and all such rates shall be made, assessed, levied, and recovered, in like manner as county rates may, and shall continue in force until all such advances, with interest after the rate aforesaid, shall be fully paid and discharged.

4 G.4. c.63. Money advanced to be repaid in 20 years.

By stat. 4 *G.* 4. *c.* 64. § 54. It is enacted, that when it shall appear that the amount of any estimate approved by the justices, for the building or rebuilding, repairing or enlarging any gaol or house of correction, under the powers of this act, shall exceed one half of the amount of the ordinary annual assessment for the rate of any county or riding, or of any such division of a county as aforesaid, or of any district, city, town, or place, (such ordinary assessment to be taken on an average of such rate for the last seven years preceding,) it shall and may be lawful for the justices, in quarter sessions assembled, from time to time to borrow and take up on mortgage of such rate, by instrument in the form contained in the schedule to this act annexed marked (C.), or to the like effect, any sum of money not exceeding the amount of such estimate, in sums not less than 50*l.*, nor exceeding 100*l.* each, at interest, as to the said justices shall appear necessary and expedient for the purposes aforesaid, and to secure every such sum of money so borrowed upon the credit of the said rate; and it shall and may be lawful for the justices so assembled, and they are hereby authorized to treat and agree with any person for the loan of any such sums of money, and by their order to confirm every such agreement; and every such agreement, signed by the Chairman and two or more other justices present at the time of making such order, shall be and the same is hereby declared to be effectual for securing to the person so advancing any such sum of money every such sum, with interest for the same, on such terms as in and by such agreement shall be stipulated; and copies or extracts of all such agreements shall be kept with the clerk of the peace; and it shall and may be lawful for every person who shall be entitled to the money thereby secured, and such person is hereby empowered (by indorsing his name on the back of such security) to transfer the same, and his right to the principal money and interest thereby secured, unto any other person; and every such assignee may in like manner transfer the same again, and so *toties quoties*; and the person to whom such security or any such assignment thereof shall be made, and his executors, administrators, and assigns, shall be creditors upon the said rate in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced.

4 G.4. c.64. When amount of estimate for building, &c. exceeds one half of the annual county rate, such county rate may be mortgaged.

(C.)

By § 55. It is enacted that the said justices shall and they are hereby authorized and required to charge the rate to be raised upon such county, riding, division, district, city, town, or place, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall ensure the payment of the whole of the sum borrowed within fourteen years from the time of borrowing the same; and such sums shall be assessed on

Justices may charge county rates, so as the money borrowed be repaid in 14 years, with interest.

4 G.4. c.64. the county, riding, division, district, city, town, or place, in such manner as county rates are directed to be assessed by the laws now in being, and paid and applied under the direction of the justices, in discharge of the interest, and of so many of the principal sums on the said securities, as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made and the interest thereof shall be fully paid and discharged; and the justices are required to fix one or more day or days in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for the regular payment thereof; and they are hereby required to appoint a proper person to keep an exact and regular account of all the receipts and payments, under the authority of this act, in a book or books, separate and apart from other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due, and what principal money has been discharged, and what remains due; and the book or books so adjusted and settled to deliver into court at every general or quarter sessions to be held for such county, riding, division, district, city, town, or place; and the justices shall and they are required, at every such sessions, carefully to inspect all such accounts, and to make orders for carrying the several purposes of this act into execution, in such manner as to them shall seem meet; and if at any time it shall appear to the justices, that the person so appointed has neglected such order, and has not duly, and without delay, applied the money in his hands to the purposes hereby directed, such person shall forfeit half the amount of the money which shall not have been applied to the purposes of this act; and the justices so assembled in sessions as aforesaid shall direct in what order such securities shall be discharged, by drawing lots or otherwise, as they shall think fit, taking care to discharge in the first place all such securities as shall bear the highest rate of interest.

Books to be kept of receipts and payments.

5 G.4. c.85. By stat. 5 *G.* 4. *c.* 85. § 20. reciting, Whereas by stat. 4 *G.* 4. *c.* 64., and by stat. 5 *G.* 4. *c.* 12. (see *post.* § XX.) the justices of the peace in quarter sessions assembled have, in certain cases, authority to borrow on mortgage of the rate of the county, riding, division, district, city, town, or place, money for the purpose of building, rebuilding, repairing, or enlarging the gaol or house of correction, and to charge the said rate with such sum as shall ensure the payment of the whole sum borrowed, with interest, within *fourteen* years: and whereas, for the purpose of facilitating the *reduction of the rate of interest*, it may be expedient that the county, riding, division, district, city, town, or place should have power to borrow in like manner, on mortgage of its rate, a further sum for the purpose of paying off the principal sum so borrowed and secured as aforesaid; be it further enacted, that whenever it shall appear to the justices assembled at any general or quarter sessions to be holden for any county, riding, division, district, city, town, or place, having contracted a debt under the said recited acts, that advantage may arise from paying off the same and borrowing *at a lower rate of interest*, it shall be lawful for the justices so assembled to borrow on mortgage of such rate by instrument in the form directed by the said first recited act any sum or sums of money not exceeding in the whole the principal sum of money

Mortgage of rate to pay off securities. 4 G.4. c.64. 5 G.4. c.12.

Justices may borrow sums at lower interest to pay off

that may then be outstanding on the securities so theretofore granted, and therewith to discharge the whole or any part of the money for which such securities shall have been given: provided always, that it shall not be lawful to use or apply any portion of the money to be borrowed under this provision, for any purpose other than the payment and discharge of the whole or part of the principal sum then due on the securities granted under the said recited acts: provided also, that the money to be borrowed under this provision shall be borrowed on such terms and under such conditions as shall in no way interfere with or prevent the full payment and discharge of the money borrowed under the provisions of the said recited acts, and so that the rate to be raised in such county, riding, division, district, city, town, or place, shall, within 14 years from the time when the money was originally borrowed under the provisions of the said recited acts, be discharged and released from all securities so made as aforesaid.

5 G.4. c.85. — principal sums borrowed.

By stat. 4 *G.* 4. *c.* 64. § 68. And, in order to defray the expences of the several matters and things hereinbefore directed to be done, respecting gaols, houses of correction, and other prisons, and for the support and maintenance of prisoners confined therein, who are entitled by law to such support, and for all other expences necessary to the execution of this act, and not hereinbefore particularly provided for; be it further enacted, that it shall and may be lawful for the justices, at their general or quarter sessions assembled, and they are hereby authorized and empowered, to cause such sums of money as shall be necessary for all or any of those purposes, to be raised on the counties, ridings, divisions, districts, cities, towns, or places to which this act shall extend, in the same manner as rates applicable to the building, repairing, or maintenance, of such prisons respectively, are now directed to be raised by law.

4 G.4. c.64. Expences of the execution of this act to be charged upon the county rates.

As to liability of cities to provide accommodation for prisoners, see stat. 5 *G.*4. *c.*85. § 15. *post,* p. 700.

§ VIII. Powers given to sell and convey Lands, &c.

[4 G. 4. c. 64. § 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67.]

By stat. 4 *G.* 4. *c.*64. § 56. It is enacted, that it shall be lawful for the king's most excellent majesty, his heirs and successors, and for all bodies politic and corporate, and also for all guardians, committees, husbands, trustees, and attornies of all persons being infants, lunatics, idiots, under coverture, or any other disability, and also for all other persons who are or shall be seised, possessed of, or interested in any houses, buildings, lands, tenements, hereditaments, easements, or privileges, which shall be deemed necessary for the purposes of this act, to contract or agree for, and to sell, convey, and assure such houses, buildings, lands, tenements, hereditaments, easements, and privileges, unto such person as shall be named by the justices at general or quarter sessions, in trust and for the purpose of erecting new prisons, or of enlarging old ones, and the yards, courts, and outlets thereunto belonging; and all such contracts, agreements, sales, conveyeances, and assurances shall be valid and effectual in law to all intents and purposes whatsoever.

Bodies politic, &c. empowered to sell and convey lands.

4 G. 4. c. 64. Where crown lands are necessary, treasury, &c. may convey the same.

§ 57. It is enacted, that whenever any lands or hereditaments of the king's majesty shall be requisite, and shall be contracted for, to be used for the purposes aforesaid, the same, if held by the king's majesty, his heirs or successors, in the right of his or their royal crown, shall and may be legally conveyed by an instrument, under the hands and seals of the lord high treasurer, or of the commissioners of H. M.'s treasury, or of any three of them, and if parcel of the duchy of *Lancaster*, by an instrument under the hand and seal of the chancellor of the same duchy, and if parcel of the duchy of *Cornwall*, by an instrument under the hands and seals of the officers of the same duchy, authorized to grant leases under stat. 3 *G.* 4. *c.* 78. § 19, 20.

If parties refuse to treat, &c. value of premises to be settled by a jury.

By § 58. Whenever any such corporation, guardian, committee, trustee, or attorney, or other person interested in any houses, buildings, lands, tenements, hereditaments, easements, or privileges, contiguous to any gaol or house of correction, which shall be deemed necessary for the purposes of enlarging or rendering more commodious any such gaol or house of correction, upon notice in writing to him, her, or them given, or left at the place or places of abode of such person or persons, or of the principal officer or officers of such corporation, shall, for the space of 21 days after such notice so given or left, neglect or refuse to treat, or shall refuse to accept such price as shall be offered by the justices or their agent, or shall otherwise not agree for the sale of such houses, buildings, lands, tenements, hereditaments, easements, or privileges; and whenever by reason of absence or incapacity any person shall be prevented from treating for such sale, then and in every such case the justices at the general or quarter sessions next after the termination of such 21 days, or at an adjournment thereof, shall and they are hereby required to cause notice to be given three times at least in some public newspaper circulating within such county, riding, division, district, city, town, or place, of their intention to take into consideration, at the next ensuing or some subsequent or general quarter sessions, or adjournment thereof, the matter of such neglect, refusal, or omission, or prevention to treat, or to accept of such price offered, or to agree for such sale as aforesaid, and the causes and reasons thereof respectively; and the person or persons, or some officer of any corporation so interested as aforesaid, in any such houses, buildings, lands, tenements, hereditaments, easements, and privileges, or some person on their behalf respectively, shall have liberty to attend such meeting, if they shall think fit, and to state to the justices there assembled their reasons for such neglect, refusal, or omission as aforesaid; and in case the justices at such last-mentioned sessions, or the major part of them, shall, after hearing what the parties interested as aforesaid, or their agents, have to allege in behalf of their respective interests, and upon due consideration had of such matter as aforesaid, resolve to proceed to the valuation and purchase of such lands, tenements, hereditaments, easements, or privileges, notwithstanding such neglect, refusal, or omission, or prevention as aforesaid, then and in every such case the justices at such sessions, or any two or more of them appointed for that purpose, shall cause the value of such houses, buildings, lands, tenements, hereditaments, easements, and privileges, to be inquired into and ascertained by a jury of indifferent men of the county,

riding, division, district, city, town, or place, wherein the same shall be situate, and to that end shall summon before such jury, and examine upon oath (which oath any one of the justices is hereby empowered to administer) any person or persons whomsoever; and such justices, or any two of them, shall, by ordering a view or otherwise, use all ways and means for the information of themselves and of such jury in the premises; and when such jury shall have inquired of and ascertained by their verdict the value of such houses, buildings, lands, tenements, hereditaments, easements, and privileges, the said justices shall thereupon order that the sum which shall so appear to be the value of such houses, buildings, lands, tenements, hereditaments, easements, and privileges, shall be paid in such manner as is hereinbefore directed touching the money to be paid for such houses, buildings, lands, tenements, hereditaments, easements, or privileges, for sale whereof the persons interested shall contract and agree in manner aforesaid; which verdict and order shall be filed of record by the clerk of the peace, or other officer having the custody of the records of the county, riding, division, district, city, town, or place, and shall be final and conclusive, to all intents and purposes whatsoever, against all parties and persons whomsoever, claiming or to claim in possession, reversion, remainder, or otherwise, their heirs and successors, as well absent as present, infants, lunatics, idiots, and persons under coverture, or any other disability whatsoever, corporations, guardians, committees, husbands, trustees, and attornies, or any other person or persons whomsoever. 4 G.4. c.64.

§ 59. For the summoning and returning such juries, such justices, or any two of them, may issue their warrant to the sheriff or officer having the returning of writs within the county, riding, division, district, city, town, or place within the limits of which the houses, buildings, lands, tenements, hereditaments, easements, or privileges, shall be situate, requiring him to impannel, summon, and return an indifferent jury of 24 persons, qualified to serve on juries, to appear before the said justices, or any two of them, at such time and place as in such warrant shall be appointed; and such sheriff or officer is hereby required to impannel, summon, and return such number of persons accordingly, and out of the persons so impannelled, summoned, and returned, or out of such of them as shall appear upon such summons, the justices, or any two of them, shall and they are hereby empowered and required to draw by ballot, and to swear, or cause to be sworn, twelve men, who shall be the jury for the purposes aforesaid; and in default of a sufficient number of jurymen so returned, the said sheriff or officer shall take such other honest and indifferent men of the bystanders, or that can speedily be procured to attend that service, as shall make up the number twelve; and all persons concerned shall have their lawful challenges against any of the persons impannelled when they come to be sworn; and the said justices, or any two of them, shall have power to impose a fine or fines on such sheriff or officer, or his deputy or deputies, making such default in the premises, and on any of the persons who shall be summoned and returned on such jury, and who shall not appear, or appearing shall refuse to be sworn on the said jury, or being sworn shall refuse to give or shall not give a verdict, or shall in any other manner wilfully neglect his or their duty therein; and also on any

How jury to be summoned and chosen.

Fines may be imposed for neglect of duty.

4 G. 4. c. 64. person who, being summoned and required to give evidence before the said jury, shall refuse or neglect to appear, or appearing shall refuse to be sworn or to give evidence, so that no such fine be more than 10*l.* nor less than 20*s.* on any one person for one offence.

Expences of jury, &c. how defrayed.

§ 60. In case any jury shall deliver a verdict for more money as the value of the houses, buildings, lands, tenements, hereditaments, easements, or privileges so to be purchased, than shall have been offered for the purchase thereof by the justices or their agent, to any person capable of contracting for the same, the costs and expences of summoning and maintaining the jury and witnesses shall be borne and paid out of the same fund as the expences of the buildings to be erected; but if such jury shall deliver a verdict for no more or for less money than the money which shall have been so offered by such justices or their agent, then the costs and expences of summoning and maintaining the jury and witnesses shall be borne and paid by the person or persons with whom such controversy or dispute, touching the value of such houses, buildings, lands, tenements, hereditaments, easements, or privileges, shall arise: provided always, that in all cases where any person or persons shall, by reason of absence, have been prevented from treating, such costs and expences shall be borne and paid out of the same fund as the expences of the buildings to be erected.

Conveyance to be made on payment of purchase money.

§ 61. Upon payment of such sum and sums of money so to be ascertained and judged (that is to say) first in or towards the payment and discharge of any sums due on charges, incumbrances, and liens, if any, affecting the several estates respectively, and then to the owners of the said estates respectively, if any shall remain for that purpose, the person or persons who shall be so found and adjudged to be the owners of the said several estates, of and in the said houses, buildings, lands, tenements, or hereditaments, easements or privileges respectively, and also the owners of any such incumbrances, charges, and liens respectively, shall make and execute, or procure to be made and executed to the person or persons so named by such justices, and his or their heirs, a good and sufficient conveyance or conveyances, thereby granting, releasing, or assigning to them the said houses, buildings, lands, tenements, or hereditaments, easements or privileges, and all such estate, right, title, term, or interest therein, or charge, incumbrace, or lien thereon; and immediately upon such payments, and entry of such verdicts of the said juries, and judgments, sentences, and decrees, orders, and other proceedings as aforesaid, the said lands, houses, buildings, and premises shall vest in the person or persons to be so named by the said justices, and his and their heirs, and he and they shall be deemed in law to be in the actual seisin and possession thereof, to all intents and purposes whatsoever, as fully and effectually as if every person having any estate in the premises, in possession, remainder, reversion, or expectancy, or any charge, incumbrance, or lien thereon, was of full age and of sound mind and memory, and had actually and duly conveyed the same to such trustee by lease and release, bargain and sale enrolled, feoffment with livery and seisin, fine and recovery, or by any other legal conveyance whatsoever.

§ 62. If any money shall be agreed or awarded to be paid for any houses, buildings, lands, tenements, hereditaments, easements, or privileges, purchased, taken, or used by virtue of the powers of this act, which shall belong to any corporation, feme covert, infant, lunatic, person or persons under any other disability or incapacity, such money shall, in case the same shall amount to the sum of 200*l.*, with all convenient speed be paid into the bank of *England*, in the name and with the privity of the accountant-general of the high court of chancery, to be placed to his account, *ex parte* the justices of the peace for the county of ——, to the intent that such money shall be applied under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said houses, buildings, lands, tenements, hereditaments, easements, or privileges, in the purchase of the land-tax, or discharge of any debt or debts, or such other incumbrances, or part thereof, as the said court shall authorize to be paid, affecting the same lands, tenements, or hereditaments, or affecting other houses, buildings, lands, tenements, hereditaments, easements, or privileges, standing settled therewith to the same or the like uses, intents, and purposes; or where such money shall not be so employed, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other houses, buildings, lands, tenements, hereditaments, easements, or privileges, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner as the houses, buildings, lands, tenements, hereditaments, easements, or privileges, which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect; and in the mean time and until such purchase shall be made, the said money shall by order of the court of chancery, upon application thereto, be invested by the said accountant-general in his name, in the purchase of three pounds *per centum* consolidated or three pounds *per centum* reduced bank annuities; and in the mean time, and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid by order of the said court to the person or persons who would for the time being have been entitled to the rents and profits of the houses, buildings, lands, tenements, hereditaments, easements, or privileges so hereby directed to be purchased, in case such purchase or settlement were made.

4 G.4. c.64. Application of compensation when exceeding 200*l.*

§ 63. Provided always, that if any money so agreed or awarded to be paid for any houses, buildings, lands, tenements, hereditaments, easements, or privileges, purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of 200*l.*, and shall amount to or exceed the sum of 20*l.*, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the houses, buildings, lands, tenements, hereditaments, easements, or privileges so purchased, taken, or used,

Application when the compensation is less than 200*l.* but not less than 20*l.*

4 G.4. c.64. or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the bank of *England*, in the name and with the privity of the said accountant-general of the high court of chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said justices (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and the dividends arising thereon, may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the direction or approbation of the said court of chancery.

Application where the money is less than 20*l*.

§ 64. Provided also, that where such money so agreed or awarded to be paid as next before mentioned shall be less than 20*l*., then and in all such cases the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the houses, buildings, lands, tenements, hereditaments, easements, or privileges, so purchased, taken, or used for the purposes of this act, in such manner as the trustees shall think fit; or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively.

In case of not making out titles, purchase money to be paid into the bank in the name of the accountant-general in chancery.

§ 65. In case the person or persons to whom any sum or sums of money shall be awarded for the purchase of any houses, buildings, lands, tenements, hereditaments, easements, or privileges, to be purchased by this act, shall refuse to accept the same, or shall not be able to make out a good title to the premises to the satisfaction of the said justices; or in case such person or persons to whom such sum or sums shall be so awarded as aforesaid cannot be found, or if the person or persons entitled to such houses, buildings, lands, tenements, hereditaments, easements, or privileges, be not known or discovered; then and in every such case it shall and may be lawful to and for the said justices to order the said sum or sums of money so awarded as aforesaid to be paid into the bank of *England*, in the name and with the privity of the accountant-general of the court of chancery, to be placed to his account to the credit of the persons interested in the said houses, buildings, lands, tenements, hereditaments, easements, or privileges (describing them), subject to the order, controul, and disposition of the said court of chancery; which said court of chancery, on the application of any person or persons making claim to such sum and sums of money, or any part thereof, by motion or petition, shall be and is hereby empowered, in a summary way of proceeding or otherwise, as to the same court shall seem meet, to order the same to be laid out and invested in the public funds, and to order the distribution thereof, or payment of the dividends thereof, according to the respective estate or estates, title or interest, of the person or persons making claim thereunto, and to make such other order in the premises as to the said court shall seem just and reasonable; and the cashier or cashiers of the bank of *England*, who shall receive such sum or sums of money,

is and are hereby required to give a receipt for such sum or sums of money, mentioning and specifying for what and for whose use the same is or are received, to such person or persons who shall pay any such sum or sums of money into the bank as aforesaid. 4 G.4. c.64.

When any question shall arise touching the title to the money paid into the bank.

§ 66. Provided always, that where any question shall arise touching the title of any person to any money to be paid into the bank of *England* in the name and with the privity of the accountant-general of the court of chancery, in pursuance of this act, for the purchase of any houses, buildings, lands, tenements, hereditaments, easements, or privileges, or of any estate, right, or interest in any houses, buildings, lands, tenements, hereditaments, easements, or privileges to be purchased in pursuance of this act, or to any bank annuities to be purchased with any such money, or the dividends or interest of any bank annuities, the person or persons who shall have been in possession of such houses, buildings, lands, tenements, hereditaments, easements, or privileges, at the time of such purchase, and all persons claiming under such person or persons, shall be deemed and taken to have been lawfully entitled to such houses, buildings, lands, tenements, hereditaments, easements, or privileges, according to such possession, until the contrary shall be shewn to the satisfaction of the said court of chancery; and the dividends or interest of the said bank annuities to be purchased with such money, aud also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such houses, buildings, lands, tenements, hereditaments, easements, or privileges, or to some estate or interest therein.

The court of chancery may order reasonable expences of purchases to be paid.

§ 67. Provided also, that where by reason of any disability or incapacity of the person or persons or corporations entitled to any houses, buildings, lands, tenements, hereditaments, easements, or privileges to be purchased under the authority of this act, the purchase money for the same shall be required to be paid into the court of chancery, and to be applied in the purchase of other houses, buildings, lands, tenements, hereditaments, easements, or privileges, to be settled to the like uses in pursuance of this act, it shall and may be lawful to and for the said court of chancery to order the expences of such last-mentioned purchases from time to time to be made in pursuance of this act, or so much thereof as the said court shall deem reasonable, to be paid by the said justices, out of any monies to be received for the purposes of this act, who shall from time to time pay such sums of money for such purposes as the said court shall direct.

5 G.4. c.85. Regulating the notices when *commonable* lands are required for a prison.

By stat. 5 *G.* 4. *c.* 85. § 18. Reciting "whereas it may be found expedient in some places, for the purpose of building, enlarging, or rendering more commodious the gaol or house of correction, to fix upon lands or tenements over which rights of common exist; and in such case great difficulties may arise in purchasing and obtaining a conveyance of such commonable lands or tenements under the general powers of stat. 4 *G.* 4. *c.* 64.; it is therefore enacted, that for the purpose of the said recited act and of this act, and of any local act relative to any such gaol or house of correction, the churchwardens for the time being of the parish

5 G.4. c.85.

wherein any such commonable lands or tenements shall be situate, shall be considered as the persons solely and absolutely entitled to the rights of common of pasture, or other commonable rights to which any such lands or tenements shall be subject; and that the monies for which any such commonable rights shall be purchased shall be paid to such churchwardens, whose receipts shall be an effectual discharge for the same; and the same monies shall be applied by such churchwardens to such general and public purposes within the parish where the lands or tenements so purchased shall be situate, as a vestry of such parish, to be convened by such churchwardens, shall direct."

Notices to be delivered to the occupier.

§ 19. Enacts, "that for the purpose of receiving the notice required by stat. 4 *G.* 4. *c.* 64. to be given to persons interested in houses, buildings, lands, tenements, hereditaments, easements, or privileges contiguous to any gaol or house of correction, and deemed necessary for the purposes of enlarging the same, or rendering it more commodious, the occupier of such houses, buildings, lands, tenements, hereditaments, easements, or privileges, shall be deemed the person interested therein; and that every such occupier, upon receiving any such notice, shall forthwith transmit or deliver the same to any other person interested, under whom he may hold the houses, buildings, lands, tenements, hereditaments, easements, or privileges so deemed neeessary."

§ IX. Ascertaining to what Class or Classes each Prison to be applicable.

[4 *G.* 4. *c.* 64. § 4, 5. 8.—5 *G.* 4. *c.* 85. § 14, 15.]

4 G.4. c.64. Justices in sessions shall proceed to carry this act into effect;

By stat. 4 *G.* 4. *c.* 64. § 4. At the *Michaelmas* general quarter sessions which shall be held in every county, riding, or division of a county in *England* and *Wales*, and in the several districts, cities, towns, and places to which this act shall extend, next after the commencement of this act, and at any subsequent general or quarter sessions to be held from time to time, the justices of the peace there assembled shall proceed in carrying this act into effect; and such justices shall, by orders to be made for that purpose, ascertain and declare to what class or classes of prisoners every such gaol, house, or houses of correction, or any part or parts of any of them respectively, shall be applicable; and every such order shall be signed by the chairman of such sessions, and shall be notified by the clerks of the peace to the several justices of the peace in every such county, riding, or division, district, city, town, or place respectively; and notice thereof shall be inserted in three of the newspapers usually circulated in such county, riding, or division, or district, city, town, or place respectively, within three weeks after any such order shall be made at any such sessions; and a copy thereof shall be served upon the keeper of every gaol or house of correction within every such county, riding, division, city, district, town, or place; and after the making of such order, and service of such copy thereof upon such keeper as aforesaid, such class or classes of prisoners as shall be specified in such order, and no other, shall be commited to or

and shall ascertain the classes to be confined in the several prisons.

Notice of the order of sessions to be given, and a copy served on the keeper of every gaol, &c.

detained in any such gaol, house or houses of correction, or any part of any of them respectively; and all persons not coming within the class or description of prisoners who may lawfully be committed to or detained in such prison as shall be appointed by the justices for the confinement of one or more class or classes of prisoners, may be removed to the gaol or house of correction of the county, riding, or division; and every such gaol or house of correction shall be deemed the legal gaol, prison, or place of confinement of every person respectively committed to the same in pursuance of such order as aforesaid; any thing in any act or acts, or any law, custom, or usage to the contrary notwithstanding: Provided always, that no classification of prisoners shall be made in any house of correction appropriated to the reception of any particular class or classes of prisoners, which shall be in any way inconsistent with or contrary to the classification directed by this act.

4 G.4. c.64.

No classification to be made in any house of correction contrary to this act.

By § 5. It is enacted, that where in any county, riding, or division of a county, or in any of the cities, towns, and places named in the said Sched. (A.), any house of correction shall be part of the same building, or inclosed in the same boundary wall as, or shall be contiguous to, the common gaol, and shall be under the superintendence of the same keeper, and the same visiting justices, it shall be lawful for the justices of the peace of the county, division, city, town, or place, assembled at any general or quarter sessions, from time to time, with the consent of the sheriff of the county for the time being, signified in writing under his hand, to proceed to carry into effect the classification and separation directed by this act in the whole of such united or contiguous building or buildings, instead of in each such house of correction and gaol, and to divide the whole of such building, or united or contiguous buildings, into such number of compartments for the purpose of such separation and classification as would be required under the regulations of this act, if the same had been one distinct gaol or house of correction; and also at any general or quarter sessions from time to time, by their order or orders, and with such consent of the sheriff as aforesaid, to ascertain and declare what part or parts of the same building, or united or contiguous buildings, shall be considered as the gaol, and what part or parts thereof respectively shall be considered as the house of correction, and shall be appropriated to the confinement of particular classes and descriptions of prisoners, and to direct what classes and descriptions respectively shall be confined in each part or division of such building, or united or contiguous buildings; and all persons to be committed to or detained in the respective parts and divisions so to be ascertained and appropriated of any such building, or united or contiguous buildings, to them respectively applicable, shall be deemed and held to be in legal custody: Provided that prisoners for debt may be removed to and shall always be confined in the part or parts of such building, or united or contiguous buildings, which shall be so ascertained or be appropriated as and for the gaol of the county, division, city, town, or place; and such removal shall not be deemed or taken to be an escape.

Where house of correction and gaol are parts of the same building, or inclosed in the same boundary-wall, and under the same keeper and visiting justices, the classification in the whole of such buildings, and not in each part separately required by this act, shall be carried into effect.

(A.)

Prisoners for debt to be confined in that part of the building appropriated for the gaol.

Stat. 5 *G.*4. *c.*85. § 14. Reciting whereas by stat. 4 *G.*4. *c.*64. it is required, that when the gaol and house of correction are in-

Where gaol and house of correc-

5 G. 4. c. 85.

tion are contiguous, the chapel and infirmary may be common to both.

closed within the same boundary-wall, it shall be ascertained and declared what part or parts shall be considered as the gaol, and what as the house of correction; enacts, that notwithstanding any thing in the said act contained it may be lawful for the justices, in their general or quarter sessions, to declare in any such case that such parts of the buildings as shall be appropriated for the chapel, and for the sick wards or infirmaries, shall be common both to the gaol and to the house of correction, and that in that case a double set of wards shall not be necessary.

The liability of cities is not to be altered, as to the description of prisoners, or the contribution towards expences.

§ 15. Enacts, that nothing in the said recited act or in this act contained shall oblige any city, town, borough, port, or liberty, to provide in its gaol or house of correction accommodation for any class of prisoners who could not be lawfully committed to such prison before the passing of the said recited act; and that nothing in the said recited act or this act contained shall alter or affect the liability of any bodies politic or corporate, or of the inhabitants of any parish, township, or place, or of any individuals bound by statute, tenure, custom, prescription, or usage, to repair or to contribute towards the repair of any prison, or to maintain or contribute towards the maintenance of the prisoners confined in any prison, or to pay or contribute towards the payment of any expences whatever connected with any prison, but that all such parties shall remain liable to all such charges as if the said recited act and this act had not been made. See *ante*, § VII.

4 G. 4. c. 64. Power to justices to commit to the house of correction of the county, in cases where the person is apprehended in any district, &c. mentioned in the schedule.

By stat. 4 *G.* 4. *c.* 64. § 8. In all cases where any person liable by law to be committed to the house of correction shall be apprehended within any district, city, town, or place mentioned in the schedule to this act annexed, and the inhabitants of any such district, city, town, or place are or shall be contributory to the support and maintenance of the house or houses of correction of the county, riding, or division in which such district, city, town, or place is situate, it shall and may be lawful for the justices of the peace of such district, city, town, or place, to commit such person to the house of correction of the county, riding, or division in which such district, city, town, or place is situate; and every person so committed shall and may be received, detained, dealt with, and ordered to be set and kept to hard labour or other work, or conveyed and sent away or discharged, and be subject and liable to to the same correction and punishment, to all intents and purposes, as if committed by any justice or justices of the peace of such county, riding, or division; and in such case it shall not be necessary or required that any other house of correction shall be built or maintained in or for such district, city, town, or place, and the inhabitants of such district, city, town, or place shall not be compelled or compellable to the payment of any rate or sum of money whatever for the building or maintaining of any other house of correction in or for such district, city, town, or place.

Not necessary to build a house of correction for any such district, &c.

§ X. Benefactions and Gifts, how to be applied and examined into.

[4 G. 4. c. 64. § 35, 36.]

In what manner bequests and

By stat. 4 *G.* 4. *c.* 64. § 35. After reciting, that whereas provision is made in this act for supplying poor prisoners with food

and clothing: and whereas bequests have been made, and benefactions have been given, for supplying such poor criminal prisoners with these necessaries: it is enacted, that it shall be lawful for the justices in general or quarter sessions assembled, to apply such bequests or benefactions for the benefit of such poor prisoners, either by providing them with the implements of labour, or with the means of returning to their own homes, or in such manner as to the magistrates may appear expedient. 4 G.4. c.64. benefactions may be applied.

§ 36. The chief justices of the courts of K. B. and C. P. and the chief baron of the court of exchequer, or any one of them, together with the lord mayor and two of the aldermen, or with three of the aldermen of the city of *London*, for and in respect of the gaols and prisons within the city of *London* and the liberties thereof, and the said chief justices or chief baron, or any one of them, with three justices of the peace of the counties of *Middlesex* and *Surrey* respectively, for and in respect of the gaols and prisons in the counties of *Middlesex* and *Surrey*, and the justices of gaol delivery and great sessions, and the justices of peace of every other county, riding, and division of a county, at any general or quarter session of the peace to be holden for such county, riding, or division respectively, in their respective jurisdictions, and all commissioners for charitable uses, shall do their best endeavours and diligence to examine and discover the several gifts, legacies, and bequests bestowed and given for the benefit and advantages of the poor prisoners in the several gaols and prisons to which this act shall extend, and to send for any deeds, wills, writings, and books of account whatsoever, and any persons concerned therein, and to examine them upon oath to make true discovery thereof, (and which such chief justices, chief barons, justices of gaol delivery and great sessions, mayor, aldermen, and justices of the peace, have hereby full power and authority to do,) and to order and settle the payment, recovery, and receipt of all such gifts, legacies, and bequests, when so discovered and ascertained, in such easy and expeditious manner, that the prisoners for the future may not be defrauded, but receive the full benefit thereof, according to the true intent of the donors, or the provisions of this act; and that lists or tables of such gifts, legacies, and bequests, for the benefit of the prisoners in every gaol or prison respectively, fairly written, shall be registered by the clerks of the peace of the respective counties and places in the rolls of their respective sessions, without fee or reward, and copies thereof shall be hung up in such gaols and prisons respectively, in some open room or place to which the prisoners may have resort as occasion shall require. Chief justices, &c. to examine into gifts for prisoners. Lists of gifts to be registered by the clerks of the peace, and hung up in gaols.

§ XI. Rules and Regulations to be observed in all Prisons.

[4 *G.*4. *c.* 64. § 10, 11, 12, 13. 15.]

By stat. 4 *G.*4. *c.*64. § 10. After reciting, that whereas it is fit and proper to secure an uniformity of practice in the management of the several prisons to which this act shall extend; it is enacted, that the following rules and regulations shall 4 G.4. c.64. Rules and regulations to be observed in all gaols.

4 G.4. c.64. be observed, and carried into effect in every such prison in *England* and *Wales*, which shall be maintained by any county or riding, or division of a county as aforesaid, as a gaol or house of correction, and in the gaol and house of correction of every district, city, town, or place mentioned in the schedule marked (A.) annexed to this act, and in every united and contiguous gaol and house of correction which shall be jointly used in manner aforesaid for the purposes of this act, and in every prison authorized to be continued under this act as aforesaid, in any county or riding, or division of a county, so far as such rules may be applicable or can be applied to the particular description or class of prisoners confined in such prison:—

(A.)

Keeper. 1st. The keeper of every such prison shall reside therein; he shall not be an under-sheriff or bailiff, nor shall be concerned in any occupation or trade whatsoever; no keeper or officer of a prison shall sell, nor shall any person in trust for him or employed by him sell, or have any benefit or advantage from the sale of any article to any prisoner, nor shall he, directly or indirectly, have any interest in any contract or agreement for the supply of the prison.

Matron. 2d. A matron shall be appointed in every prison in which female prisoners shall be confined, who shall reside in the prison; and it shall be the duty of the matron constantly to superintend the female prisoners.

Visiting the wards. 3d. The keeper shall, as far as may be practicable, visit every ward, and see every prisoner, and inspect every cell once at least in every twenty-four hours; and when the keeper, or any other officer, shall visit the female prisoners, he shall be accompanied by the matron, or in case of her unavoidable absence, by some female officer of the prison.

Keeper's journal. 4th. The keeper shall keep a journal, in which he shall record all punishments inflicted by his authority, or by that of the visiting justices, and the day when such punishments shall have taken place, and all other occurrences of importance within the prison, in such manner as shall be directed by the regulations to be made under this act; which journal shall be laid before the justices at every general or quarter sessions, to be signed by the chairman, in proof of the same having been there produced.

Hard labour. 5th. Due provision shall be made in every prison for the enforcement of hard labour in the cases of such prisoners as may be sentenced thereto, and for the employment of other prisoners. The means of hard labour shall be provided, and the materials requisite for the employment of prisoners shall be purchased, under such regulations as may be made for that purpose by the justices in general or quarter sessions assembled. If the work to be performed by the prisoners be of such a nature as to require previous instruction, proper persons shall be appointed to afford the same.

Separation of males and females. 6th. The male and female prisoners shall be confined in separate buildings or parts of the prison, so as to prevent them from seeing, conversing, or holding any intercourse with each other; and the prisoners of each sex shall be divided into distinct classes, care being taken that the prisoners of the following classes do not intermix with each other:—

In Gaols.

1st. Debtors and persons confined for contempt of court on civil process. 4 G.4. c.64.

2d. Prisoners convicted of felony.

3d. Prisoners convicted of misdemeanors.

4th. Prisoners committed on charge or suspicion of felony.

5th. Prisoners committed on charge or suspicion of misdemeanors, or for want of sureties.

In Houses of Correction.

1st. Prisoners convicted of felony.

2d. Prisoners convicted of misdemeanors.

3d. Prisoners committed on charge or suspicion of felony.

4th. Prisoners committed on charge or suspicion of misdemeanors.

5th. Vagrants.

Such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecution shall also be kept separate in all gaols and houses of correction. Provided always, that nothing herein contained shall be construed to extend to prevent the justices from authorizing, at their discretion, the employment of any prisoner in the performance of any menial office within the prison, or for the purpose of instructing others; and provided also, that if the keeper shall at any time deem it improper or inexpedient for a prisoner to associate with the other prisoners of the class to which he or she may belong, it shall be lawful for him to confine such prisoner with any other class or description of prisoners, or in any other part of the prison, until he can receive the directions of a visiting justice thereon, to whom he shall apply with as little delay as possible, and who in every such instance shall ascertain whether the reasons assigned by the keeper warrant such deviation from the established rules, and shall give such orders in writing as he shall think fit, under the circumstances of the particular case.

Justices may authorize the employment of prisoners in menial offices.

Power to the keeper to confine a prisoner with another class till he receives the directions of a visiting justice.

7th. Female prisoners shall in all cases be attended by female officers.

8th. Every prisoner sentenced to hard labour shall, unless prevented by sickness, be employed so many hours in every day, not exceeding ten, exclusive of the time allowed for meals, as shall be directed by the rules and regulations to be made under this act, except on *Sundays*, *Christmas Day*, and *Good Friday*, and on any days appointed by public authority for fasting or thanksgiving. Hours of hard labour.

9th. Prayers, to be selected from the liturgy of the church of *England* by the chaplain, shall be read at least every morning by the chaplain, the keeper, or by some other person, as by the rules and regulations shall be directed; and portions of the Scriptures shall be read to the prisoners, when assembled for instruction, by the chaplain, or by such person as he may appoint or authorize. Daily prayer.

10th. Provision shall be made in all prisons for the instruction of prisoners of both sexes in reading and writing, and that instruction shall be afforded under such rules and regulations, and to such extent, and to such prisoners, as to the visiting justices may seem expedient. Instruction.

11th. Prisoners under charge or conviction of any crime shall attend divine service on *Sundays*, and on other days when such Divine service.

4 G.4. c.64.

service is performed, unless prevented by illness or by other reasonable cause, to be allowed by the keeper, or unless their attendance shall be dispensed with by one of the visiting justices.

Prisoners not to be ironed except in case of necessity.

12th. No prisoner shall be put in irons by the keeper of any prison, except in case of urgent and absolute necessity; and the particulars of every such case shall be forthwith entered in the keeper's journal, and notice forthwith given thereof to one of the visiting justices; and the keeper shall not continue the use of irons on any prisoner longer than four days, without an order in writing from a visiting justice, specifying the cause thereof; which order shall be preserved by the keeper, as his warrant for the same. (a)

Food.

13th. Every prisoner maintained at the expence of any county, riding, division, city, town, or place, shall be allowed a sufficient quantity of plain and wholesome food, to be regulated by the justices in general or quarter sessions assembled, regard being had (so far as may relate to convicted prisoners) to the nature of the labour required from or performed by such prisoners, so that the allowance of food may be duly apportioned thereto. And it shall be lawful for the justices to order for such prisoners of every description, as are not able to work, or being able cannot procure employment sufficient to sustain themselves by their industry, or who may not be otherwise provided for, such allowance of food as the said justices shall from time to time think necessary for the support of health. Prisoners under the care of the surgeon shall be allowed such diet as he may direct. Care shall be taken that all provisions supplied to the prisoners be of proper quality and weight. Scales and legal weights and measures shall be provided, open to the use of any prisoners, under such restrictions as shall be made by the regulations of each prison. See *R.* v. *Justs. of N. R. Yorkshire, M.* 1823. *2 B. & C.* 286. *post.*

Restriction as to procuring food, &c.

14th. Prisoners who shall not receive any allowance from the county, whether confined for debt or before trial, for any supposed crime or offence, shall be allowed to procure for themselves, and to receive at proper hours, any food, bedding, clothing, or other necessaries, subject to a strict examination, and under such limitations and restrictions, to be prescribed by the regulations to be made in manner directed by this act, as may be reasonable and expedient, to prevent extravagance and luxury within the walls of a prison; all articles of clothing and bedding shall be examined,

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Putting prisoners in irons.

(a) If a prisoner for felony break the gaol, this seems to be a negligent escape, because there wanted either that due strength in the gaol that should have secured him, or that due vigilance in the gaoler or his officers to have prevented it, and therefore it is by law lawful for the gaoler to hamper them with irons to prevent their escape. 1 *Hale*, 601.

And it is said, that a gaoler is no way punishable for keeping even a debtor in irons. 2 *Haw.* c. 22. § 32.

But the learned editor of Lord *Hale's History* observes, that this liberty even in the case of a felon (much more in the case of a prisoner for debt) can only be intended where the officer has just reason to fear an escape; as where the prisoner is unruly, or makes any attempt to that purpose; but otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of *England*, by which gaolers are forbidden to put their prisoners to any pain or torment. And Ld. *Coke*, 2 *Inst.* 381., is express that by the common law it might not be done. 1 *Hale*, 601.

in order that it may be ascertained that such articles are not likely to communicate infection or facilitate escape. 4 G.4. c.64.

15th. No prisoner who is confined under the sentence of any court, nor any prisoners confined in pursuance of any conviction before a justice, shall receive any food, clothing, or necessaries, other than the gaol allowance, except under such regulations and restrictions as to the justices in general or quarter sessions assembled may appear expedient, with reference to the several classes of prisoners, or under special circumstances, to be judged of by one or more of the visiting justices. (*a*)

16th. Due provision shall be made for the admission, at proper times, and under proper restrictions, of persons with whom prisoners committed for trial may desire to communicate; and such rules and regulations shall be made, by the justices in general quarter sessions assembled, for the admission of the friends of convicted prisoners, as to such justices may seem expedient; and the justices shall also impose such restrictions upon the communication and correspondence of all such prisoners with their friends, either within or without the walls of the prison, as they shall judge

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(*a*) By stat. 53 *G.* 3. *c.* 21. The commissioners of customs or excise, or any four of them in *England*, and three of them in *Scotland*, may cause an allowance to be made for the necessary subsistence of poor prisoners in gaol under any exchequer process, or commitment in execution by any commissioner or justices of the peace, or under any writ of extent, or suit upon bond pursuant to orders in council, of a sum not exceeding 7½*d.* and not less than 4½*d.* *per* day, out of any monies in their hands respectively. See tit. Excise and Customs, *ante*. See also stat. 52 G.3. c.160. Vol. IV. Poor, § III. 4. 53 G.3. c.21. Allowance to poor persons confined under exchequer process, &c.

In regard to the great power which gaolers and their officers have, and, while it is exercised with moderation, ought to have over their prisoners, the law watcheth with a jealous eye over *their* conduct: and therefore if a prisoner under their care dieth, whether by disease or accident, the coroner upon notice of such death, which notice the gaoler is obliged to give in due time, ought to resort to the gaol, and there upon view of the body make inquisition into the cause of his death; and if the death was owing to cruel and oppressive usage on the part of the gaoler or any officer of his, or, to speak in the language of the law, *to duress of imprisonment*, it will be deemed wilful murder in the person guilty of such duress. I say *the person guilty of the duress*, because though in a civil suit the principal may in some cases be answerable in damages to the party injured through the default of the deputy upon the *respondeat superior;* yet in a capital prosecution, the sole object of which is the punishment of the delinquent, each man must answer for his own acts or defaults. *Fost.* 321. 1 *Hale*, 432. 2 *Hale*, 57. 1 *East's P. C.* 331. 1 *Russ.* 667. Prisoners dying in gaol. See Rule 24. and § xi. p. 706.

The instances of oppression, which may fall within the rule of duress of imprisonment, are as various as a heart cruelly bent upon mischief can invent. I will mention two which have lately come in judgment. A gaoler, knowing that a prisoner infected with the smallpox lodged in a certain room in the prison, confined another prisoner, *against his will*, in the same room. The second prisoner, who had not had the distemper, *of which the gaoler had notice*, caught the distemper and died of it. This was very rightly holden to be murder in the gaoler. *Fost.* 322. *Case of Bainbridge & Corbett*, 17 *How. St. Tri.* 398. 2 *Str.* 856. 1 *East's P.C.* 331.

Another straitly confined his prisoner in a low, damp, unwholesome room, without allowing him the common necessaries of chamber-pot, &c. for keeping things sweet and clean about him. The prisoner, having been long confined in this manner, contracted an ill habit of body which brought on distempers of which he died. This likewise was very rightly holden to be murder in the party guilty of this duress. *Rex* v. *Huggins*, 2 *Ld. Raym.* 1574. 17 *How. St. Tri.* 298. 1 *East's P.C.* 331. 1 *Russ.* 668.

These were deliberate acts of cruelty, and enormous violations of the trust the law reposeth in its ministers of justice. *Fost.* 322.

4 G.4. c.64. necessary for the maintenance of good order and discipline in such prison.

17th. The surgeon shall examine every prisoner who shall be brought into the prison, before he or she shall be passed into the proper ward; and no prisoner shall be discharged from prison if labouring under any acute or dangerous distemper, nor until, in the opinion of the surgeon, such discharge is safe, unless such prisoner shall require to be discharged. The wearing apparel of every prisoner shali be fumigated and purified, if requisite, after which the same shall be returned to him or her, or in case of the insufficiency of such clothing, then other sufficient clothing shall be furnished, according to the rules and regulations of the prison; but no prisoner before trial shall be compelled to wear a prison dress, unless his or her own clothes be deemed insufficient or improper, or necessary to be preserved for the purposes of justice; and no prisoner who has not been convicted of felony shall be liable to be clothed in a party-coloured dress; but if it be deemed expedient to have a prison dress for prisoners not convicted of felony, the same shall be plain.

18th. Every prisoner shall be provided with suitable bedding; and every male prisoner with a separate bed, hammock, or cot, either in a separate cell, or in a cell with not less than two other male prisoners.

19th. The walls and ceilings of the wards, cells, rooms, and passages used by the prisoners throughout every prison, shall be scraped and lime-washed at least once in the year; the day-rooms, work-rooms, passages, and sleeping-cells shall be washed or cleansed once a week, or oftener if requisite. Convenient places for the prisoners to wash themselves shall be provided, with an adequate allowance of soap, towels, and combs.

20th. All prisoners shall be allowed as much air and exercise as may be deemed proper for the preservation of their health.

21st. No tap shall be kept in any prison; nor shall spirituous liquors of any kind be admitted for the use of any of the prisoners therein, under any pretence whatever, unless by a written order of the surgeon, specifying the quantity and for whose use. No wine, beer, cider, or other fermented liquors shall be admitted for the use of any prisoners, except in such quantities, in such manner, and at such times, as shall be allowed by the rules hereafter to be made in pursuance of this act.

22d. No gaming shall be permitted in any prison; and the keeper shall seize and destroy all dice, cards, or other instruments of gaming.

23d. No money under the name of garnish shall be taken from any prisoner on his or her entrance into the prison, under any pretence whatever.

24th. Upon the death of a prisoner, notice thereof shall be given by the keeper forthwith to one of the visiting justices, as well as to the coroner of the district, and to the nearest relative of the deceased, where practicable.

No prisoner to sit on an inquest.

§ 11. In case the coroner shall hold an inquest on the body of any prisoner who shall have died within the prison, none of the prisoners confined in that prison shall be a juror on such inquest.

Court of mayor and aldermen,

§ 12. It shall be lawful for the court of mayor and aldermen of the city of *London*, so far as respects the prisons within the said

city and liberties thereof, and for five justices of the peace in general or quarter sessions assembled, of each county, riding, or division of a county, or of any district, city, town, or place to which this act shall extend, so far as respects the prisons within their respective jurisdictions, to make such further and additional rules for the government of such prisons respectively, and for the duties to be performed by the officers of the same, as to them may seem expedient; provided, that no such further or additional rules shall be enforced, until the same shall have been submitted, in *London* and *Middlesex*, to the two chief justices, and elsewhere to the justices of gaol delivery or of great sessions respectively, at some gaol delivery or great sessions to be held after the making such rules, and until such chief justice or justices of gaol delivery or of great sessions respectively shall have subscribed a certificate or declaration that they do not see any thing contrary to law therein: provided always, that all such rules and regulations shall be consistent with and conformable to the rules and regulations in this act contained: and the justices in general or quarter sessions assembled shall and they are hereby required from time to time to cause copies of so much of the rules of each prison as relates to the treatment and conduct of prisoners confined therein, to be printed in legible characters, and to be fixed up in conspicuous parts of every prison, so that every prisoner may be enabled to have access thereto; and all rules and regulations made and approved pursuant to the directions of this act shall be binding upon the sheriff and upon all other persons; provided, that no such rules shall be so construed as to interfere with the right or duty of the sheriff to appoint or remove any keeper of a county goal, or other prison subject to the authority of such sheriff.

4 G.4. c.64.

so far as respects city prisons, and five justices in sessions, may make further regulations for prisons. In London and Middlesex rules to be submitted to the two chief justices, and elsewhere to the justices of gaol delivery, &c.

Copies of rules to be put up in prisons.

Rules shall bind sheriffs, except as to appointment of gaolers.

§ 13. Provided always, that all the powers and authorities given by this act to justices of the peace in general or quarter sessions assembled, in the several counties, and all other acts to be done and performed by justices of the peace at any sessions in pursuance of this act, shall be exercised and performed, so far as regards the prisons in the city of *London* and liberties thereof, by the court of mayor and aldermen of the said city, as heretofore has been accustomed, and not by the said mayor and aldermen as magistrates at the general or quarter sessions of the peace to be holden in and for the said city; any thing in this act contained to the contrary thereof in anywise notwithstanding.

Powers of general or quarter sessions to be exercised in London by the court of mayor and aldermen, as heretofore, &c.

§ 15. The chairman of the *Michaelmas* quarter sessions of the peace, which shall be held next after the commencement of this act, for every county, riding, division, district, city, town, or place to which this act shall extend, shall transmit, within 14 days after the termination of such session, to one of H. M.'s principal secretaries of state, a true and correct account of their proceedings at such sessions for carrying this act into effect, and also a copy of all such rules and regulations as shall be then in force for the government of every prison within the jurisdiction of the justices assembled at such sessions, and shall also transmit at the same time, or within three months afterwards, to such secretary of state, plans of all such prisons, drawn upon a scale of one-sixteenth of an inch to a foot; and the said copies and plans shall be carefully preserved in the office of such secretary of state: and the chairman of every succeeding *Michaelmas* quarter sessions shall

Copies of proceedings and regulations of justices, and plans of prisons to be transmitted to secretary of state.

4 G.4. c.64. transmit, within 14 days after the termination of such *Michaelmas* quarter sessions, a true and correct copy of all such additions to such rules and regulations, or alterations made therein, as shall have been duly sanctioned since the preceding *Michaelmas* quarter sessions, together with plans, on the scale above mentioned, of any additions to the buildings of such prison, or alterations made in the construction thereof, during the same period.

55 G 3. c.50. All fees or gratuities payable at gaols and bridewells shall be abolished.

By stat. 55 *G.* 3. *c.* 50., intituled "*An act for the abolition of gaol and other fees, connected with the gaols in* England," after reciting that it is expedient, for the better government of gaols and bridewells in *England*, that all fees and gratuities payable at the same, for the entrance, commitment, or discharge of any prisoner, should be abolished; it is enacted, that, from and after the 1st day of *October*, 1815, all fees and gratuities paid or payable by any prisoner, on the entrance, commitment, or discharge, to or from prison, shall absolutely cease, and the same are hereby abolished and determined.

Quarter sessions to make allowances to gaolers, &c.

§ 2. And whereas in some places such fees and gratuities as aforesaid are payable to the gaoler or his servants, and are to him or them as a salary; it is enacted, that it may be lawful for the justices of the peace for any county, city, or town, assembled in general or quarter sessions, to make such allowances to the aforesaid gaoler, or servants, as may to them seem fit, in the way of salary or compensation, for the fees or gratuities, payable by prisoners, now abolished by this act.

Allowances to be paid out of the county rates, &c.

§ 3. The said justices for any county, city, or town, may direct the said allowances to be paid out of any county rate, city rate, or town rate, now by law authorized to be made and levied.

Every prisoner charged with felony or misdemeanor and acquitted, to be discharged without payment of any fee, &c.

§ 4. After reciting that it is customary for clerks of the assize, clerks of the peace, clerks of the court or their deputies, or other officers in the courts of assize or session, to demand and take from persons indicted, divers sums in the way of fees; it is enacted, "That every prisoner who now is or hereafter shall be charged with or indicted for any felony, or as an accessary thereto, or with or for any misdemeanor, before any court holding criminal jurisdiction within that part of the U. K. of *G. B.* and *Ireland* called *England*, against whom no bill of indictment shall be found by the grand jury, or who, on his, her, or their trial, shall be acquitted, or who shall be discharged by proclamation for want of prosecution, shall be immediately set at large, without payment of any fee or sum of money, for or in respect of his, her, or their discharge, to any person or persons whomsoever; except only in such cases wherein the prisoner shall have been charged, and shall then stand charged with any process authorizing the detention of such prisoner: provided always, that if it shall happen that any prisoner who shall so stand charged with any process authorizing his detention as aforesaid, shall have been discharged in supposed obedience to this act, by reason that the sheriff or other officer entitled to have detained him was at the time of such his discharge ignorant that there was any such charge against him, it shall in such case be lawful for such sheriff or other officer, on receiving information of such charge, presently to retake the prisoner so discharged as aforesaid, and thereupon forthwith to detain him in custody upon such charge, in such manner as the said sheriff or other officer might have done if such prisoner had not been set at

large; and that upon his being so retaken the said prisoner shall be deemed for the purpose of that suit to have been in custody continually from the time when he so first stood charged as aforesaid." 55 G. 3. c. 50.

All fees usually paid to clerks of the court, assizes, &c. to be abolished.

§ 5. All such fees as have been usually paid or payable to the several clerks of assize and clerks of the peace, clerks of the court, or their deputies, in that part of the U. K. of *G. B.* and *Ireland* called *England*, in any of the cases aforesaid, shall absolutely cease, and the same are hereby abolished and determined; and from and after the passing of this act, no clerk of assize, clerk of the peace, clerk of the court, or their deputies, shall ask, demand, take, or receive any sum or sums of money, from any of the said prisoners as fees, for or in respect of his, her, or their discharge.

County treasurers to pay allowances for places not usually assessed to the county at large.

§ 6. In lieu and satisfaction of such lawful fees so abolished as aforesaid, the treasurers or other proper officers of the several counties in *England*, or of such districts, hundreds, ridings, or divisions of a county as are not usually assessed to the county at large, and of such cities, towns corporate, cinque ports, liberties, franchises, and places, as do not pay to the rates of the several counties in which they are respectively situated, shall, on receiving a certificate signed by one or more judge or justice of the peace, before whom such prisoner shall have been discharged as aforesaid, (which certificate the judge or justice is hereby required to give,) pay out of the rates of such county, or of such district, hundred, riding, or division, or out of the public stock of such city, town corporate, cinque port, liberty, franchise, or place, such lawful sum as has been usually paid upon that occasion, for every prisoner discharged as aforesaid, to such clerk of assize, clerk of the peace, or clerk of the court, or their respective deputies; which several sums so paid in pursuance of this act shall be respectively allowed to the said treasurer and officers, by the justices before whom their accounts shall be passed.

Indemnification for fees to clerks of the peace.

§ 7. Every clerk of the peace, or his or their deputy or deputies, and all and every officer who shall claim any fees or indemnification for the same, by virtue of any of the provisions herein-before contained, for and in respect of any such prisoners, shall deliver at each and every session of the peace, or at some adjournment thereof, an account of all fees so due to him, or for which he shall claim any indemnification; which account shall be verified upon oath in court, before the chairman of such sessions.

Clerks of assize to deliver an account of fees.

§ 8. The clerks of assize shall, at each and every assize to be holden, deliver in to the judge of the assize who shall sit for the trial of such prisoners, an account of such fees as shall be due to him, for and in respect of such prisoners; which account shall be verified upon oath before such judge to whom such account shall be delivered.

Punishment of officers for exacting fees in future.

§ 9. Any clerk of assize, clerk of the peace, clerk of the court, or their deputies or other officers, exacting such fees, shall be rendered incapable of holding his or their offices, and be guilty of a misdemeanor.

Liberates to debtors to be granted free of expence, and compensation

§ 10. And whereas it has been customary in some places for the sheriff or under sheriff to demand, for the liberate granted to any debtor on his discharge, a fee or gratuity; it is enacted, that such liberate shall be granted to such debtor free of all expences; and that it shall be in the power of the justices of the peace for each

55 G.3. c.50.

made to sheriffs for the same.

county, city or town, assembled in quarter session, subject however to the approbation of the judges of assize, to make such compensation to the sheriff or under sheriff, out of the county, city or town rate, as shall to them seem fit.

How allowances shall be raised for places which do not contribute to county rates.

§ 11. And whereas there are several cities, towns corporate and places within this kingdom, which do not contribute to the payment of any county rate, and have no town rate or public stock; and doubts may arise whether such cities, towns corporate and places can be legally rated and assessed towards the payment of the salaries, allowances, and compensations, in lieu of such fees and gratuities; be it enacted, that in all such cases the salaries, allowances, and compensations, in lieu of fees and gratuities herein-before directed to be made, shall be raised, levied, collected, and paid, within such cities, towns corporate and places, by a separate rate and assessment to be made by the churchwardens and overseers of the poor of the several parishes and precincts within such cities, towns corporate and places, and by such and the like ways, methods, and means, as the rates for the relief of the poor are, can, or may be raised, levied, and collected, in such cities, towns corporate and places.

Allowances in certain places to be paid out of the poor's rates.

§ 12. And whereas it may happen that the sums of money to be raised in the said cities, towns corporate and places, or some or one of them, to answer and pay such salaries, allowances, and compensations herein-before directed to be made, in lieu of fees and gratuities by this act abolished, may be so small, that it may not be convenient to make an equal separate rate and assessment for the same, upon the said parishes and precincts within such cities, towns corporate and places; be it enacted, that in such last mentioned case, and when and as often as the same shall happen, the salaries, allowances, and compensations shall and may, by order of the said judge or judges, or justices in sessions assembled as aforesaid, be paid out of the monies from time to time raised for the relief of the poor in the said several cities, towns corporate, and places; and the treasurers or persons from time to time having the management of the said monies raised for the relief of the poor in the same cities, towns corporate, and places, respectively, are hereby authorized and required to pay the said sums of money so ordered to be paid by the said judge or judges, or justices, of the said last-mentioned monies, when and as often as the same shall be so ordered: provided always, that the order for such allowances as may be made by the justices of the peace assembled in general or quarter sessions, be approved by the judge or judges of assize on the first circuit ensuing after such warrant shall have been made out by the justices of peace assembled in general or quarter sessions for any county, city, or town, and that such order shall not be deemed or taken as a legal order without such warrant from the judge or judges of assize; provided always, that should there be more parishes than one in the same district, the payments are to be made and levied in such rates and proportions as the respective parishes pay to the poor's rate.

Punishment of gaolers for exacting any fee or gratuity from prisoners.

§ 13. Any gaoler, who shall, from and after the 1st day of *October*, 1815, exact from any prisoner any fee or gratuity for or on account of the entrance, commitment, or discharge of such prisoner, or who shall detain any prisoner in custody for non-payment of any fee or gratuity, shall be rendered incapable of holding

his office, be guilty of a misdemeanor, and be punished by fine and imprisonment. 55 G. 3. c. 50.

§ 14. Provided always, that nothing in this act contained shall be construed to extend to the *King's Bench* prison, H. M.'s prison of the *Fleet*, the *Marshalsea* and *Palace* Courts. Not to extend to certain gaols.

And by stat. 56 *G.* 3. *c.* 116. after reciting stat. 55 *G.* 3. *c.* 50., and that doubts had arisen whether the judges of assize had power by virtue of the said act to grant to certain officers who before the passing thereof were entitled to certain fees abolished by the said act, a certificate for the purpose of enabling the said officers to receive compensatio i for such fees so abolished; it is therefore declared and enacted, that from and after the passing of this act it shall and may be lawful for the judges of assize, who have gone the several circuits since the passing of the said act, as well as future judges of assize respectively, to grant such certificate as is required by the said act; and the said judges of assize are hereby authorized and required to receive from every such officer as, previous to the passing of the said act, was lawfully entitled to any fees abolished by the said act, an account in writing of what they severally claim to be due to them for such abolished fees, which account shall be verified upon the oath of the party claiming the same, in like manner as is provided by the said act in respect to the clerks of assize and clerks of the peace. 56 G. 3. c. 116. Judges of assize may grant certificate to certain officers to receive compensation for abolished fees;

§ 2. The amount of every such account, after being verified as aforesaid, shall be paid in the same manner as is provided in and by the said act, in respect to the clerks of assize and clerks of the peace. to be paid in same manner as is provided by recited act.

§ 3. And whereas doubts have arisen whether the said act extends to prisoners confined in gaols and prisons under civil process for debt only, and whether prisoners confined in the gaols and prisons of liberties and franchises under civil process for debt, and the gaolers and keepers of such gaols and prisons, are within the meaning and purview of the said recited act: and whereas it is expedient that such doubts should be removed; it is therefore declared and enacted, that the said recited act and the provisions therein contained shall be deemed and construed to extend and shall extend to all prisoners, as well civil as criminal, whether confined for debt or crime in any of the prisons in *England*, except as to the said prisons in the said act excepted; and that the gaolers and keepers of all such gaols and prisons except as aforesaid, and their servants, as well within liberties as without, shall have compensation for their fees or gratuities abolished by the said recited act or this act, as in the said recited act is mentioned. Recited act to extend to prisoners for debt.

§ 4. The allowances made to the bodar or keeper of the prison of *Dovor castle*, in lieu of fees and gratuities paid or payable by any prisoner on his or her entrance, commitment, or discharge to or from such prison, and also the compensation to the registrar of the Cinque ports and clerk of *Dover castle* for the *liberati* granted to any debtor or * his or her discharge, shall be paid out of the funds raised by virtue of *An act for the relief of poor debtors and others confined within the gaol of* Dovor castle: provided always, that such allowance and compensation shall be verified, allowed, and paid in the same manner as the relief to such poor debtors, and payment for the same, is directed to be allowed, verified, and paid by the said recited act. Allowances to the gaoler of Dovor castle prison, &c. how to be paid. * *Sic.* 54 G. 3. c. xcvii.

§ XII. Spirituous Liquors, carrying into, or selling in Prisons.

[4 G. 4. c. 64. § 40.]

Punishment for carrying spirituous liquors into prisons.

By stat. 4 *G.* 4. *c.* 64. § 40. If any person in contravention of the existing rules, shall carry or bring, or attempt or endeavour to carry or bring into any prison to which this act shall extend, any spirituous or fermented liquor, it shall be lawful for the gaoler, keeper, turnkey, or any other of the assistants to the said gaoler or keeper, to apprehend or cause to be apprehended such offender, and to carry him or her before a justice of the peace (who is hereby empowered to hear and determine such offence in a summary way), and if he shall lawfully convict such person of such offence, he shall forthwith commit such offender to the common gaol or house of correction, there to be kept in custody for any time not exceeding three months, without bail or mainprize, unless such offender shall immediately pay down such sum of money, not exceeding 20*l.*, and not less than 10*l.*, as the justice shall impose upon such offender, to be paid, one moiety to the informer, and the other moiety in aid of the rate applicable to the maintenance of such prison; and if any justice shall receive information upon oath, that any spirituous or fermented liquor is unlawfully kept or disposed of in any prison, he may enter and search, or issue his warrant to enter and search for such liquor; and in case it shall be found, it shall be lawful for the person so finding to seize the same, and cause it to be disposed of as the justice shall direct; and if any gaoler or keeper of any prison shall sell, use, lend, or give away, or knowingly permit or suffer to be sold, used, lent, or given away, in such prison, or brought into the same, any spirituous or fermented liquor, in contravention of the existing rules of such prison, he shall for every such offence, over and above any other punishment by this act enacted, forfeit the sum of 20*l.*

§ XIII. Officers of the Prisons — their Powers and Duties, &c.

(*a*) *Visiting justices.*
[4 G. 4. c. 64.]

(*b*) *Sheriff.*
[4 G. 4. c. 64.]

(*c*) *Keepers, Matrons, Turnkeys.*
[4 G. 4. c. 64.]

(*d*) *Chaplains.*
[4 G. 4. c. 64.]

(*e*) *Surgeons.*
[4 G. 4. c. 64.]

(*f*) *Annual Statement to Secretary of State of the State Establishment of Officers and Servants.*
[5 G. 4. c. 85.]

§ XIII. (a) Visiting Justices.

[4 G. 4. c. 64. § 16, 17, 18. 23.]

By stat. 4 *G.* 4. *c.* 64. § 16. It is enacted that the justices in every county, riding, division, district, city, town, or place, to which this act shall extend, at the general or quarter sessions next after the commencement of this act, and at every ensuing general or quarter sessions, shall and they are hereby required to nominate two or more justices who shall consent thereto, to be visitors of each gaol and house of correction within their jurisdiction, and to report the names and places of abode of such visiting justices to one of H. M.'s principal secretaries of state; and one or more of the visiting justices so appointed shall personally visit and inspect each prison at least three times in each quarter of a year, and oftener if occasion shall require, and shall examine into the state of the buildings, so as to form a judgment as to the repairs, additions, or alterations which may appear necessary, strict regard being had to the classification, inspection, instruction, employment, or hard labour, required by this act, and shall further examine into the behaviour and conduct of the respective officers, and the treatment, behaviour, and condition of the prisoners, the means of setting them to work, the amount of their earnings, and the expences attending the prison, and of all abuses within the same, and in matters of pressing necessity, and within the powers of their commission as justices, shall take cognizance thereof, and proceed to regulate and redress the same; and if the said visitors shall at any time observe, or be satisfactorily informed of any extraordinary diligence or merit in any prisoners under their inspection, they shall report the same to the justices of peace for the county, riding, division, district, city, town, or place, at their next or any subsequent general or quarter session to be holden for the county or place in which such prison is situate, in order that such justices may, if they shall think proper, recommend any such offender to the royal mercy, in such degree or upon such terms as to them shall seem meet.

Visiting justices shall be appointed by sessions.

Duties of such visitors.

Visitors may recommend offenders on account of good conduct.

§ 17. Provided always, that it shall be lawful for any justice of the peace for any county, riding, or division, district, city, town, or place, at his own free will and pleasure, and without being appointed a visitor, to enter into and examine any prison of such county, riding, division, district, city, town, or place, at such time or times and so often as he shall see fit; and if he shall discover any abuse or abuses therein, he is hereby required to report them in writing at the next general or quarter sessions of the peace or adjourned sessions, which shall be holden for such county, riding, or division, district, city, town or place; and then and so often as a report of any abuse or abuses in any such prison shall be made by the visiting justices, or either of them, or by any other justice of the peace for such county, riding, or division, district, city, town, or place, the abuse or abuses so reported shall be taken into immediate consideration by the justices of the peace, for such county, riding, or division, district, city, town, or place, at the general or quarter sessions at which such report shall be made; and they are hereby required to adopt the most effectual

Any justice may visit the prison, and report abuses to the sessions.

4 G.4. c.64.

measures for inquiring into and rectifying such abuse or abuses as soon as the nature of the case will allow.

How far this power may extend where prisoners are committed to close confinement.

§ 18. Provided also, that nothing herein contained shall extend or be construed to extend to authorize or empower any visiting or other justice of the peace to converse or hold any intercourse or communication, except as hereinafter mentioned, with any person who may be committed by lawful authority to any such gaol or other prison, there to be kept in safe and close confinement (*a*); but that nevertheless, it shall and may be lawful for any visiting justice, so appointed as aforesaid, to visit and inspect at all times when he shall think proper, the apartment or place in which such person shall be kept or confined in any prison, and also to see such person, and to hear or receive any representation from him or her as to his or her treatment in such prison, and to inquire and examine into the same; any thing herein contained to the contrary thereof notwithstanding.

Visiting magistrates to report the state of the gaol to quarter sessions.

By § 23. It is enacted, that at every general or quarter sessions, the visiting justices shall make a report in writing of the state and condition of each prison within their jurisdiction, of what repairs, additions, or alterations shall have been made or may be required, and of any abuse or abuses which they may have observed, or of which they may have received information, in the management of the prison as well as of the general state of the prisoners, as to morals, discipline, employment, and hard labour, and observance of rules; and the justices assembled at such sessions shall proceed to consider every such report, and to act forthwith as they may see occasion.

§ XIII. (*b*) Sheriff.

[4 G. 4. c. 64. § 6. 74.]

Persons removed to the part of the building declared to be the gaol, shall be deemed in custody of the sheriff, who shall cease to be answerable for prisoners in any other part of the building.

By stat. 4 *G.* 4. *c.* 64. § 6. It is enacted, that all persons who in pursuance of any such order shall be removed to, committed to, or detained in the part of such united or contiguous buildings which shall be so declared and ascertained aforesaid to be the gaol, shall from thenceforth be deemed to be in the legal custody of the sheriff and of the gaoler appointed by the sheriff, in the same manner as if such person had been committed to the common gaol before the passing of this act: provided also, that the sheriff shall not be answerable for the safe custody of any person who in pursuance of any such order shall from time to time be removed to, committed to, or detained in any part of such united or contiguous buildings other than the part so ascertained and declared to be the gaol.

Officers required to perform certain duties.

§ 74. All matters and things which by this act the sheriff of any county is required or authorised to do and perform, shall, in those districts, cities, towns, liberties, or places where the sheriff hath no jurisdiction, be done and performed by the bailiff or bailiffs, or other like officer or officers, having or exercising within their res-

(*a*) To be kept "*in salvâ et arctâ custodia,*" says *Dalton*, c. 170. p. 410. means "*salva*" that the prisoner cannot escape; "*arcta,*" that is, without conference with others, or intelligence of things abroad. See also *Com. Dig.* tit. *Imprisonment* (I.) 2 *Bulst.* 148. 191. 2 *Haw.* c. 16. § 15. *Wyndham's case*, 1 *Str.* 3. See also *Rex* v. *Eastaff*, 1 *Gow*, 138. and *Hans. Parl. Deb.* vol. xxxvi. p. 1025.

pective districts, cities, towns, and liberties, duties analogous to the duties of the sheriff of a county; and that all matters and things which by this act the treasurer of any county is required or authorized to do and perform, shall, in those places where the county treasurer hath no authority, be done and performed by the officer or officers having and exercising within such places duties analogous to those of a county treasurer; and that all matters and things which by this act the clerk of the peace of any county, riding, or division is required or authorized to do and perform, shall, in those places where the clerk of the peace of the county hath no authority, be done and performed by the town clerk or other like officer having and exercising within such places duties analogous to those of the clerk of the peace of any county. 4 G. 4. c. 64.

§ XIII. (c) Keepers, Matrons, Turnkeys.

[4 G. 4. c. 64. § 14. 19, 20, 21, 22. 25, 26, 27. 34. 40, 41.]

Gaolers shall attend quarter sessions next after commencement of act, and future quarter sessions, to report on actual state of prisons, &c.

By stat. 4 *G.* 4. *c.* 64. § 14. The gaoler and keeper of every gaol and house of correction, maintained at the expence of any county, or of any such riding or division of a county as aforesaid, in *England* and *Wales*, or maintained by any district, city, town, or place specified in the schedule to this act annexed marked (A.), shall make a report in writing, of the actual state and condition of every such gaol and house of correction, and of the number and description of prisoners confined therein, to the justices, at the several general or quarter sessions to be holden next after the commencement of this act, and at every ensuing general or quarter sessions in every such county, riding, division, district, city, town, or place; and shall at every such general or quarter sessions, attend and give answer upon oath, to all such inquiries as shall be made by the justices at such sessions, with respect to the state and condition of every such gaol and house of correction, and of the prisoners confined therein, and with respect to any other matters and things relating to the said gaol and house of correction, respecting which such justices shall deem it necessary to make any inquiry for the purpose of proceeding and continuing to carry this act into execution, and of ascertaining how far every such gaol and house of correction is capable of affording the means of the classification required by this act.

Returns to be made at the several assizes by keepers of prisons of the persons sentenced to hard labour.

By § 19. The keeper of every gaol and house of correction, to which this act shall extend, shall previously to the first day of every assizes, great sessions, or sessions of gaol delivery, make out a true and just return in writing of all persons in his custody who have been sentenced to hard labour by the court at any previous assizes, great sessions, or sessions of gaol delivery, specifying in such return the manner in which such sentences have been carried into execution, the particular species of labour in which such prisoners have been employed, and the average number of hours in a day for which such persons so sentenced have been kept to work; which return shall be signed by such keeper, and also by one at least of the visiting justices, who shall add thereto such observations as the case and circumstances may appear to him to require; and such return shall be delivered to

4 G.4. c.64.

the justice of assize and gaol delivery, and of great sessions, and shall be kept and filed by the proper officer, amongst the records of the court.

Lists of prisoners tried for felony to be transmitted to secretary of state by the keeper of every prison.

§ 20. Enacts, that the keeper of every prison within *England* and *Wales*, having the custody of prisoners charged with felony, shall, on the second day next after the termination of every session of the peace, session of oyer and terminer, or session of gaol delivery, great session, or other session held for the trial of prisoners being in such prison, whether such session shall be held under any commission or by virtue of any charter or prescription, transmit by the post of that day to one of his majesty's principal secretaries of state, a calendar containing the names, the crimes, and the sentences of every prisoner tried at such session, and distinguishing, with respect to all prisoners capitally convicted, such of them as may have been reprieved by the court, and stating the day on which execution is to be done upon those who have not been reprieved; and that whenever the court shall adjourn for any longer time than one week, the day upon which the adjournment shall be made shall be deemed the termination of the session within the meaning of this act; and every keeper of any such prison, who shall neglect or refuse to transmit such calendar, or shall wilfully transmit a calendar containing any false or imperfect statement, shall for every such offence forfeit the sum of 20*l*.

Penalty 20*l*.

Keeper shall deliver to court of quarter sessions, a certificate how far rules have been observed.

§ 21. And, for the better ensuring the strict observance of the rules and regulations to be made for the government of the prisons to which this act shall extend, it is enacted, that at each quarter sessions of the peace, the keeper of every prison within the jurisdiction of the court holding such session shall and is hereby required to deliver or cause to be delivered to such court, a certificate, signed by himself, which certificate shall contain a declaration how far the rules laid down for the government of his prison have been complied with, and shall point out any and every deviation therefrom which may have taken place; and if any keeper of a prison shall neglect to deliver, or cause to be delivered, such certificate as aforesaid, he shall forfeit for every such offence the sum of 10*l*.

Penalty 10*l*.

Keeper to make a return as in schedule (B.) to the clerk of the peace or his deputy previous to every Michaelmas quarter sessions.

§ 22. One week before the *Michaelmas* session in every year, the keeper of every prison to which this act shall extend shall make up a return of the state of his prison for the year then ending, in the form contained in the schedule annexed to this act, marked (B.), and shall deliver the same, or cause the same to be delivered, to the clerk of the peace, or his deputy, for the use of the justices assembled at such quarter session.

Justices may appoint keepers and other officers,

§ 25. It shall and may be lawful for the justices assembled at the general or quarter sessions, and they are hereby empowered and required, to nominate and appoint such keepers, matrons, taskmasters, schoolmasters, and other officers, as to them may seem expedient, for every prison within their jurisdiction to which this act shall extend, except the keeper of the common gaol; and to remove, as occasion may require, all officers so by them nominated and appointed: provided always, that no woman shall be keeper of any prison in which male prisoners are confined.

Keeper of the gaol excepted.

§ 26. It shall and may be lawful for the justices assembled at the general or quarter sessions, and they are hereby empowered, to fix salaries and allowances, to such amount, and subject to such conditions as to them shall seem meet, for the keeper of the common gaol, and for every keeper, matron, taskmaster, schoolmaster, and officer of each gaol and house of correction within their jurisdiction; and to order such salaries, and the expence of such allowances, to be paid out of the rate lawfully applicable thereto; and the salaries and allowances so fixed, to alter, reduce, augment, suspend, or stop from time to time, as occasion shall require: and in case any gaoler or keeper of any prison shall, from confirmed sickness, age, or infirmity, become incapable of executing the office in person, the justices of the peace at any general or quarter sessions of the county, riding, division, district, city, town, or place respectively, shall take the circumstances of the case into their consideration; and if such justices shall deem it expedient, they are hereby empowered to grant to such gaoler or keeper such an annuity as they in their discretion shall think proportioned to the merits and time of his service, and may order the payment thereof out of the rates lawfully applicable to the building or repairing of such gaols and prisons: provided always, that the annual amount paid by way of superannuation or allowance to any retired keeper of any prison, shall not exceed the amount of two-thirds of the salary fixed for the succeeding keeper of such prison.

4 G.4. c.64.

Justices to fix salaries of keepers, &c.

Gaoler may be superannuated, and allowed a pension.

§ 27. Whenever the keeper or any other officer of any common gaol or other prison to which this act shall extend, shall be removed from or resign his or her office, or shall depart this life, every keeper or other officer so removed or resigning, and his or her family, and the family of every such deceased keeper or other officer, shall forthwith quit the possession of the house or apartments in which he, she, or they shall have previously resided by virtue of such office; and if any keeper or other officer so removed or resigning, or any members of the family of any keeper or other officer so removed, resigning, or departing this life, shall refuse or neglect to quit such possession for forty-eight hours after notice given to him, her, or them, in writing, by the under-sheriff, or other officer appointed by the sheriff, in case the house or apartments of which possession shall be required shall be in the common gaol, and by the clerk of the peace in case such house or apartments shall be in any house of correction, any two justices, upon proof made before them of such removal, resignation, or death, and of the service of such notice, and of such neglect or refusal to comply therewith, may, by warrant under their hands and seals, direct the sheriff of the county, or other officer having the return of writs, to eject such keeper, or the family of such keeper, out of such house or apartments, and the sheriff or such other officer shall accordingly clear the possession thereof in like manner as upon a writ of *habere facias possessionem.*

When keeper or other officer shall be removed or resign, &c. two justices may direct the sheriff to eject them from apartments in the prison.

§ 34. And from and after the commencement of this act, there shall be kept in every prison to which this act shall extend, a book, in which the chaplain and every other officer of the said prisons not residing within such prisons, but attending on or required to attend on such prison, shall regularly insert the date of every visit made by such chaplain or other such officer respectively; and every such entry shall be signed with the name and in the proper

Books to be kept in which visits of chaplain, &c. shall be entered.

4 G.4. c.64.

hand-writing of such chaplain or other officer respectively, and shall contain such remarks as may be thought necessary on the occasion of any such visit; and every keeper of every such prison shall be responsible for the safe custody of such book, whole, unmutilated, and unaltered, and shall at all times, when required so to do, produce such book for inspection to the justices at every general or quarter sessions, and to the visiting justices, or to any justice of the peace for the county, riding, division, district, city, town, or place wherein such prison shall be situate; and the chaplain shall, on every *Michaelmas* quarter sessions, deliver to the justices a statement of the condition of the prisoners, and his observations thereupon.

Penalty on gaoler permitting the sale of spirituous liquors.

§ 40. If any gaoler or keeper shall sell, use, lend, or give away, or knowingly permit to be sold, used, lent, or given away, in such prison, or brought into the same, any spirituous or fermented liquor, he shall for every such offence, over and above any other punishment by this act enacted, forfeit 20*l*.

Power of the keeper of a prison to punish certain offences.

§ 41. The keeper of every prison shall have power to hear all complaints touching any of the following offences, (that is to say,)

1. Disobedience of any of the rules of the prison.
2. Assaults by one person confined in such prison upon another, when no dangerous wound or bruise is given.
3. Profane cursing and swearing.
4. Any indecent behaviour, and any irreverent behaviour at chapel, all of which are declared to be offences by this act, if committed by any description of prisoners.
5. Absence from chapel without leave.
6. Idleness or negligence in work, or wilful mismanagement of it, which are also declared to be offences by this act, if committed by any prisoner under charge or conviction of any crime; and the said keeper may examine any persons touching such offences, and may determine thereupon, and may punish all such offences by ordering any offender to close confinement in the refractory or solitary cells, and by keeping such offenders upon bread and water only, for any term not exceeding three days.

§ XIII. (*d*) Chaplains.

[4 G. 4. c. 64. § 28, 29, 30, 31, 32. 34.]

Justices may appoint a clergyman to each prison.

By stat. 4 *G*. 4. *c*. 64. § 28. The justices assembled in general or quarter sessions shall and they are hereby required from time to time to nominate for each prison within their jurisdiction, to which this act shall extend, a clergyman of the church of *England* to be chaplain thereof; and the said justices may, if it seem to them expedient, nominate the same clergyman to be and officiate as chaplain to any two prisons situate within a convenient distance from each other; and the said justices are hereby authorized to appoint a salary to be paid to the clergyman so nominated chaplain as aforesaid, out of the county rate, or rate lawfully applicable to the maintenance of such prisons; and the amount of salary shall be regulated in the following manner; viz. where the chaplain shall be appointed to one prison only, and the number of prisoners, including debtors, which the said prison is calculated to receive, does not exceed 50, then the salary to be paid to him shall not be

His salary.

Where the number of pri-

more than 150*l.*; where the chaplain shall be appointed to one prison only, and the number of prisoners, including debtors, which the said prison is calculated to receive does does not exceed 100, then the salary shall not be more than 200*l.*; where the chaplain shall be appointed to one prison only, calculated to contain more than 100 prisoners, including debtors, the salary shall not be more than 250*l.*; and where the chaplain shall be appointed to one prison only, calculated to contain more than 200, or where the chaplain shall be appointed to two prisons, whatever the number of prisoners such two prisons may be calculated to contain, it shall be lawful for the justices to appoint the salary at their discretion, with reference to the duties to be performed: provided also, that when any two or more prisons shall be under the custody of one and the same keeper, they shall be considered as one prison, with reference to the duties and salary of the chaplain: provided also, that in case of sickness or necessary engagement, the chaplain shall appoint a clergyman to be his substitute for the occasion, such substitute being approved of by the visiting justices; and the name and residence of such substitute shall be specified in the chaplain's journal.

soners does not exceed 50, 150*l.*

Number not exceeding 100, 200*l.*

Exceeding 100, 250*l.*

Number of prisoners exceeding 200, or chaplain appointed to two prisons, salary to be discretionary in justices.

Where two prisons have one keeper, they shall be considered as one with respect to the duties and salary of the chaplain.

§ 29. No clergyman so nominated shall officiate in any prison until he shall have obtained a licence for that purpose from the bishop of the diocese wherein the prison is situate, nor for any longer time than while such licence shall continue in force; and notice of every such nomination shall, within one month after it shall take place, be transmitted to the bishop by the clerk of the peace or town clerk.

Clergyman not to officiate till licenced by the bishop.

Duties of chaplains.

§ 30. Every such chaplain shall on every *Sunday*, and on *Christmas-day* and *Good Friday*, perform the appointed morning and evening services of the church of *England*, and preach at such time or times between the hours of nine and five of the day, as shall be required by the rules and regulations to be made as directed by this act; and shall catechise or instruct such prisoners as may be willing to receive instruction; and shall likewise visit the prison on such other days, and perform such other duties as shall be required by the rules and regulations to be made as directed by this act; and shall administer the holy sacrament of the Lord's supper to such prisoners as shall be desirous, and as such chaplain may deem to be in a proper frame of mind to receive the same; and such chaplain shall also frequently visit every room and cell in the prison occupied by prisoners, and shall direct such books to be distributed and read, and such lessons to be taught in such prison, as he may deem proper for the religious and moral instruction of the prisoners therein; and he shall visit those who are in solitary confinement; and it shall be his particular duty to afford his spiritual assistance to all persons under warrant or order for execution; and he shall have free access to all persons convicted of murder, any law, statute, or usage to the contrary notwithstanding; except to such persons as shall be of a religious persuasion different from that of the established church, who shall have made a request that a minister of such persuasion shall be allowed to visit them; and every such chaplain shall communicate from time to time to the visiting justices any abuse or impropriety which may have come to his knowledge; and he shall

4 G.4. c.64.

Journal to be kept by them.

further keep a journal, in which he shall enter the times of his attendance on the performance of his duty, with any observations which may occur to him in the execution thereof, and such journal shall be kept in the prison, but shall regularly be laid before the justices for their inspection at every quarter sessions, and shall be signed by the chairman of the sessions, in proof of the same having been there produced; and if it shall appear to the justices in general or quarter sessions assembled, that any chaplain is incompetent to the due performance of his duties, or is unfit to be continued in his office, or shall have refused or wilfully neglected to perform the duties required of him by the rules and regulations to be made as directed by this act, they are hereby empowered to remove him from such office.

Ministers allowed to visit other prisoners under certain restrictions.

§ 31. If any prisoner shall be of a religious persuasion differing from that of the established church, a minister of such persuasion, at the special request of such prisoner, shall be allowed to visit him or her at proper and reasonable times, under such restrictions imposed by the visiting justices as shall guard against the introduction of improper persons, and as shall prevent improper communications.

Power to quarter sessions to grant annuity to any chaplain incapable, from infirmity, of executing his office.

§ 32. In case any chaplain shall from confirmed sickness, age, or infirmity, become incapable of executing the office in person, the justices of the peace, at any general or quarter sessions of the county, riding, division, district, city, town, or place respectively, shall take the circumstances of the case into their consideration; and if such justices shall deem it expedient, they are hereby empowered to grant to such chaplain such annuity as they in their discretion shall think proportionate to the merits and time of his services, and may order the payment out of the rates lawfully applicable to the building and repairing such gaols and prisons: provided always, that the amount so paid by way of superannuation or allowance to any retired chaplain of any one prison, shall not exceed the amount of two-thirds of the salary fixed for the succeeding chaplain of such prison.

Books to be kept in which visits of chaplain, &c. shall be entered.

By § 34. It is enacted, That there shall be kept in every prison to which this act shall extend, a book, in which the chaplain and every other officer of the said prisons not residing within such prisons, but attending on or required to attend on such prison, shall regularly insert the date of every visit made by such chaplain or other such officer respectively; and every such entry shall be signed with the name and in the proper handwriting of such chaplain or other officer respectively, and shall contain such remarks as may be thought necessary on the occasion of any such visit; and the chaplain shall, on every *Michaelmas* quarter sessions, deliver to the justices a statement of the condition of the prisoners, and his observations thereupon.

§ XIII. (*e*) Surgeons.

[4 *G.* 4. c. 64. § 33, 34.]

Appointment of surgeons.

By stat. 4 *G.* 4. *c.* 64. § 33. It is enacted, That the justices in general or quarter sessions assembled shall and they are hereby required from time to time to appoint a surgeon, being a member of one of the royal colleges of surgeons, to each of the prisons within

their jurisdiction to which this act shall extend; and every such surgeon shall and is hereby required to visit every prison to which he shall be so appointed twice at least in every week, and oftener if necessary, and to see every prisoner confined therein, whether criminal or debtor, and to report to every general or quarter sessions the condition of the prison, and the state of health of the prisoners under his care; and he shall further keep a journal, in which he shall enter the date of every attendance on the performance of his duty, with any observations which may occur to him in the execution thereof, and shall sign the same with his name; and such journal shall be kept in the prison, but shall regularly be laid before the justices for their inspection at every quarter sessions, and shall be signed by the chairman of the sessions, in proof of the same having been there produced; and it shall and may be lawful for the justices, at every general or quarter sessions after such appointment, to direct a reasonable sum to be paid as salary to such surgeon, and also such sums of money as shall be due for medicines, and other articles for the sick. See also § xxxiv. *ante.*

4 G. 4. c. 64.

Journal to be kept by them.

§ XIII. (*f*) Annual Statement to Secretary of State of the Establishment of Officers and Servants.

[5 G. 4. c. 85. § 8.]

By stat. 5 *G.* 4. *c.* 85. § 8. It is enacted, "That the chairman of the *Michaelmas* quarter sessions of the peace which shall be held next after the commencement of this act, for every county, riding, division, district, city, town, or place to which the said recited act shall extend, shall transmit within fourteen days after the commencement of such sessions, to one of H. M.'s secretaries of state, a true and correct statement of the establishment of officers and servants employed in every prison within the jurisdiction of the justices assembled at such sessions, specifying the number and description of such officers and servants, the salaries and emoluments of each, and by whom such officers and servants are respectively appointed; and the said statements shall be carefully preserved in the office of such secretary of state; and the chairman of every such succeeding quarter sessions shall transmit, within 14 days after the termination of such *Michaelmas* quarter sessions, a true and correct statement of any increase or diminution in every such establishment of officers and servants, or in their respective salaries or emoluments, as have been made since the preceding *Michaelmas* quarter sessions."

5 G. 4. c. 85. Statement of establishment of officers and servants, shewing the increase or diminution, to be transmitted to the secretary of state.

§ XIV. Prisoners.

(*a*) *Commitment — Receiving.*
[4 G. 4. c. 64.]

(*b*) *Employment.*
[4 G. 4. c. 64. — 5 G. 4. c. 84. — c. 85.]

(*c*) *Delivery — Supply on Discharge.*
[4 G. 4. c. 64. — 5 G. 4. c. 85.]

(*d*) *Escape, or Attempt to escape.*
[4 G. 4. c. 64.]

(e) *Punishment of refractory.* [4 G. 4. c. 64.]

(f) *Removal in certain Cases.* [4 G. 4. c. 64.]

§ XIV. (a) Commitment, Receiving.

[4 G. 4. c. 64. § 7, 8.]

4 G. 4. c. 64. Rogues and vagabonds shall be committed to the house of correction, and not to a common gaol.

By stat. 4 *G.* 4. *c.* 64. § 7. After reciting that the practice of committing vagrants to common gaols has been attended with much inconvenience to the classification of prisoners, and has prevented a uniformity of practice in the management of prisons; it is enacted, "that from and after the 1st day of *September*, 1824, in every county, riding, or division of a county in *England* and *Wales*, and in the several districts, cities, towns, or places to which this act shall extend, all idle and disorderly persons, rogues and vagabonds, incorrigible rogues, and other vagrants, shall be committed to some house of correction belonging to such county, riding, or division, district, city, town, or place respectively; and that such house of correction shall be deemed the only legal place of commitment of any such person in pursuance of any conviction by lawful authority."

Power of justices to commit to the house of correction of the county, in cases where the person is apprehended in any district, &c. mentioned in this schedule.

By § 8. It is enacted, that in all cases where any person liable by law to be committed to the house of correction shall be apprehended within any district, city, town, or place, mentioned in the schedule to this act annexed, and the inhabitants of any such district, city, town, or place are or shall be contributory to the support and maintenance of the house or houses of correction of the county, riding, or division in which such district, &c. or place is situate, it shall be lawful for the justices of the peace of such district, city, town, or place, to commit such person to the house of correction of the county, riding, or division in which such district, &c. or place is situate; and every person so committed shall and may be received, detained, dealt with, and ordered to be set to hard labour or other work, or conveyed or sent away or discharged, and be subject and liable to the same correction and punishment, to all intents and purposes, as if committed by any justice or justices of the peace of such county, riding, or division.

§ XIV. (b) Employment.

[4 G. 4. c. 64. § 37, 38. — 5 G. 4. c. 84. § 18, 19. — c. 85. § 16, 17.]

In what cases persons committed for trial may be employed in work.

By stat. 4 *G.* 4. *c.* 64. § 37. After reciting that whereas persons are often committed to prison for trial, who are willing to be employed in such work or labour as can be conveniently executed or done in the prison to which they are so committed, and it is fit that such persons should be so employed rather than that they should be obliged to remain idle during their confinement; it is enacted, that it shall and may be lawful for any one or more visiting justice or justices of any prison to which this act shall extend, to authorize, by an order in writing, the employment of any such prisoners, with their own consent, in any such work or labour; and it shall be lawful for the keeper of such prison to employ such

prisoner in such work or labour accordingly, and to pay to such prisoners any such wages or portion of the same, and at such periods, as shall be directed by such justice or justices: provided always, that it shall not be lawful to place together, on account of such employment, any prisoners who would otherwise be kept separate under the provisions of this act.

4 G.4. c.64.

Not to place together in work any prisoners who should be kept separate.

By § 38. Reciting, "whereas persons convicted of offences are frequently sentenced to imprisonment without being sentenced to hard labour; it is enacted, that it shall be lawful for two or more visiting justices of any prison to order that all such persons confined in such prisoi in pursuance of any sentence or conviction, except such prisoners as shall maintain themselves, shall be set to some work or labour not severe: and it is hereby declared, that no such prisoner, who shall be of ability to earn, and who shall have the means of earning or of otherwise providing for his own subsistence, shall have any claim to be supported at the expence of the county, riding, or division, or by the sheriff or the keeper of the prison; provided that when such ability shall cease by reason of sickness, infirmity, the want of sufficient work, or from any other cause, every such person shall, during the continuance of his inability, receive such provision and support as shall be directed for other convicted prisoners in the same prison; and the keeper of every such prison shall keep an account of the work done by every prisoner so set to work as aforesaid, and shall account to such prisoner for so much of the net profits which such prisoner shall have earned, or for such daily or other allowance for the work and labour done by such prisoner, as shall be directed either by the rules and regulations of such prison, or in case of no provision being made on this head by those rules and regulations, then for such part of the said net profits, or for such daily or other allowance as shall be directed by the visiting justices, and shall pay the amount of all accumulations of such allowance to such prisoner at his or her discharge."

Justices may employ prisoners.

Where there is ability to earn, no claim for support from the county.

Account of work done to be kept by the keeper.

Allowance to be made for the work done.

By stat. 5 *G*. 4. *c*. 85. § 16. Reciting, "and whereas by stat. 4 *G*. 4. *c*. 64. § 38. it was made lawful for one or more visiting justice or justices of any prison to which the same extended, to authorize, by an order in writing, the employment of prisoners committed for trial, with their own consent, in any such work as therein specified, it is enacted, that such consent of every such prisoner shall be freely given, and shall not be extorted or obtained by deprivation or threat of deprivation of any prison or other allowance; and that no prisoner before conviction shall, under any pretence, be employed on the tread-wheel, either with or without his consent."

5 G.4. c.85.

No prisoner shall be compelled to labour on the tread-wheel previous to conviction.

§ 17. Reciting, whereas it has been doubted whether prisoners committed to prison for trial, who are unable to maintain themselves otherwise than by being employed in some kind of work or labour in prison, are entitled to receive any prison allowance of food without being required so to employ themselves; enacts and declares "that such prisoners shall be allowed such food as may be sufficient for the support of health, without being obliged to perform any kind of work or labour as the condition of such allowance; and that any wages or portion of the same, which may become due to such prisoners from the keeper of any prison, in consequence of any order made by any visiting justice or justices of such

Prisoners to be allowed sufficient food without being obliged to work.

5 G.4. c.85.

prison, for the employment of such prisoners with their own consent, shall be paid to them as directed by such order, in addition to the food so allowed, and without any diminution of such allowance by reason of such payment."

Prisoners committed to gaol for trial, who are able, but refuse to work, are not entitled by law to have any food provided for them by the public; and therefore where a magistrate reported, as an abuse, to the justices at the quarter sessions, that untried prisoners had been compelled to work at the tread-mill, and the justices at sessions ordered that the tread-mill should be applied to the employment of other prisoners as well as those sentenced to hard labour; and that those committed for trial who were able to work, and had the means of employment offered them by which they might earn their support, but who refused to work, should be allowed bread and water only, this Court refused to grant a mandamus to compel the justices to order such prisoners any other food.

The King v. *The Justices of the North Riding of Yorkshire. M.* 1823. 4 *G.* 4. 2 *B.* & *C.* 286. *M. Stapylton*, Esquire, a magistrate for the North Riding of *Yorkshire*, in his official capacity, visited the house of correction at *Northallerton*, on the 14th *October*, 1823, and found that several prisoners committed for trial had been compelled to work upon the tread-mill against their inclinations. On the same day he made his report in writing to the justices, in general quarter sessions assembled, of this state of facts, and required the same to be taken into immediate consideration, and rectified. The sessions took the report into consideration, and made an order that the tread-mill should be applicable both as hard labour, in the cases of such prisoners as might be sentenced thereto, and for the employment of other prisoners; and also, that persons committed for trial, who were able to work, and had the means of employment offered them, by which they might earn their support, but who should obstinately refuse to work, should be allowed bread and water only. Upon an affidavit disclosing these facts, and the belief of Mr. *Stapylton* that bread and water, unaccompanied by any other article of food, does not afford sufficient nourishment for the due support of human nature, and that upon such a diet the health of prisoners cannot be preserved. — Argument on motion for a mandamus to the justices of the peace for the North Riding of *Yorkshire*, commanding them to enquire into and rectify this abuse. — By stat. 4 *G.* 4. *c.* 64. § 17., "any justice is empowered to enter into and examine the state of any gaol, as often as he shall think fit, and is required to report, in writing, any abuse therein, to the next quarter sessions; which abuse, so reported, shall be taken into immediate consideration, by the justices at such sessions, and the most effectual measures adopted for enquiring into and rectifying such abuse, as soon as the nature of the case will allow." Now, if this court see that the justices have not complied with the directions of that section, in rectifying the abuse presented, it will, by mandamus, compel them so to do. By § 10., certain regulations are prescribed for the management of prisons; and by the thirteenth regulation it is provided, that "every prisoner maintained at the expence of any county, &c., shall be allowed a sufficient quantity of plain and wholesome food, to be regulated by the sessions; regard being had (so far as may relate to convicted prisoners) to the nature of the labour required from or performed by such prisoners, so that the allowance of food may be duly apportioned thereto: and the justices may order for such prisoners of every description as are not able to work, or being able, cannot procure employment sufficient to sustain themselves by their industry, or who may not be otherwise provided for, such allowance of food as the justices shall think necessary for the support of health." Then § 37., reciting that "persons are often committed to prison for trial who are willing to be employed in such work as can be conveniently executed in the prison to which they are so committed, and it is fit that such persons should be so employed rather than that they should be obliged to remain

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idle during their confinement," enacts, that any visiting justice may "authorize, by an order in writing, the employment of any such prisoners, with their own consent, in any such work; and that the keeper of such prison is to employ such prisoners in such work or labour accordingly, and is to pay to such prisoners any such wages, or portion of the same, and at such periods as shall be directed by such justice." From these two sections it is obvious that such prisoners committed for trial, as have not the means of supporting themselves, and are, consequently, maintainable by the riding, are entitled to a sufficiency of plain and wholesome food; and that the magistrates have no authority to compel such prisoners to work at the tread-mill, or at any other species of employment against their inclinations. Now the order of the justices, made subsequently to the reported abuse, is in direct contravention of this act of parliament. The effect of that order is to compel the untried prisoners to work against their will: for if they do not work at the employment prescribed, they will have no other allowance than bread and water. That, too, cannot be considered "plain and wholesome food," within the meaning of the tenth section. Such food must necessarily be of a description adequate to the due preservation of health; yet that is negatived by the affidavit. It is true, that no individual case is mentioned in which the allowance of bread and water alone has had a prejudicial effect upon the health of the prisoner, but it is notorious, that many of the diseases afflicting the labouring classes, result from too spare a diet. [*Abbott* C. J. How are we to judge what is "plain and wholesome food?" That is matter upon which the justices are exclusively to decide. Can you refer us to any act of parliament which makes it compulsory on the county to provide with food persons committed for trial?] The only statutes bearing upon that point are 19 *Car.* 2. *c.* 4., 31 *G.* 3. *c.* 46. § 13., and 4 *G.* 4. *c.* 64. — *Abbott* C. J. It appears by the preamble of the 19 *Car.* 2. *c.* 4. that before that statute there was not any sufficient provision made for the relief and setting on work of poor persons committed to gaol for felony and other misdemeanors, and that they actually many times perished before their trial, and that the poor, living there idle and unemployed, became debauched, and came forth instructed in the practices of thievery and lewdness; and that statute then enabled the justices at sessions to provide a stock of materials, out of the county rate, for setting on work poor prisoners, and to bestow the profits arising from such labour towards their relief. The statute 31 *G.* 3. *c.* 46. § 12. extends the provisions of the former statute to all prisoners whatever within the gaols, who may be inclined and willing to work; and by the recital in the thirteenth section, it appears, that even at that time the health of the prisoners was frequently so affected by want of necessary food as to render them incapable of labour when released; and the justices at sessions are thereby authorized to order money to be paid out of the county rate towards assisting prisoners of every description who are not able to work, or who, being able, cannot obtain employment sufficient to sustain themselves by their industry. It is clear, therefore, that before the late statute prisoners who were able and unwilling to work were not entitled to be maintained at the public expence; and it is not contended that that statute casts such a burthen upon the public.

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There being, therefore, no provision in any act of parliament to compel the county to provide food for those who are able but unwilling to work, we cannot grant a mandamus to compel the justices to order any species of food to be provided for such prisoners. We ought to see clearly that the magistrates have neglected some duty imposed upon them by law before we compel them to act in any particular mode. From the facts now before the court it does not appear that labour at the tread-mill is a species of work unfit for the employment of the prisoners. I cannot say that such an employment is contrary to law. The legislature appears to have vested in the county magistrates a discretion as to the management and diet of the prisoners. — *Bayley* J. I am of opinion that the public are not bound to find food for those who are able but who are unwilling to work, and if that be so, the justices have already done more than the law required them to do, by ordering such persons bread and water. — *Best* J. (*a*) I think that a writ of mandamus ought not to issue in this case, because the magistrates have already done more than we could order them to do. If the law requires a certain thing to be done, we may order it to be done by the party upon whom the obligation of doing it is imposed. If he is to act according to his discretion, and he will not act or even consider the matter, we may compel him to put himself in motion to do the thing, but we cannot control his discretion. By the statute 4 *G.* 4. *c.* 64. § 17. the justices at sessions are bound, upon its being reported by a magistrate that certain abuses exist in a gaol, to take that report into consideration. In this case a magistrate made his report that prisoners committed for trial were compelled to work on the tread-mill. The justices at sessions took that report into consideration, and determined that the tread-mill should be applicable both as hard labour to such prisoners as were sentenced thereto, and for the employment of all other prisoners. So far they have complied with the act of parliament, by taking the matter into consideration; but it is said that they have not rectified that which is alleged to be an abuse, because they have directed the tread-mill to be used for the employment of all prisoners, and have also ordered that persons committed for trial, who are able to work, and have the means of employment offered them by the magistrates, by which they may earn their support, but who obstinately refuse to work, shall be allowed bread and water only; and it is insisted that that is not plain and wholesome food for their support, and therefore a violation of the thirteenth regulation. It is not, however, for us to decide whether it be or be not sufficient, the quality and quantity of the food being left to the discretion of the magistrates. But what right has a prisoner to whom work is offered, and who is able to do it, but will not, to have any food at the expence of the county? According to the poor laws, he who is able to labour is to be maintained by labour only, and nothing is to be provided for him but a means of employment. Neither humanity nor policy requires that one on whom a charge of felony has been made on oath, should be in a better situation than one who lives unsuspected of crime. The common law made no provision for maintaining prisoners in idle-

(*a*) *Holroyd* J. was in the Bail Court.

ness. And the preamble of the 19 *Car*. 2. *c*. 4. is a legislative declaration of the mischievous consequences resulting from poor prisoners not having the means of supporting themselves by labour, and from their living in idleness, and that statute, as a remedy for this error, enacts that the justices shall provide materials for setting on such prisoners to work. The wise principle of that, as well as all other statutes for the maintenance of the poor was, that employment should be provided for them by which they might support themselves. The 4 *G*. 4. sanctions that principle. The thirteenth regulation enables "the justices to order for such prisoners *of every description as are not able to work*, or being able cannot procure employment sufficient to sustain themselves by their industry, or who may not otherwise be provided for, such allowance of food as they shall think necessary for the support of health." The thirty-seventh section enables the magistrates to employ prisoners committed for trial *with the consent* of such prisoners. This section prevents them from forcing such prisoners to work against their will, but it does not oblige them to find food for such as are able and will not work. An idle person has no right to the maintenance now claimed for him, and therefore we cannot order the magistrates of the county to provide better food for such prisoners than they have already offered them. I do not mean to say that magistrates in all cases would be justified in offering to such prisoners the same severe labour that persons condemned to hard labour are bound to perform. Inasmuch as the object of employment of prisoners committed for trial is support and not punishment, it may perhaps be fit to provide the most profitable and least irksome labour which, consistently with the security of the prisoners and the situation of the gaol, can be provided. Rule refused.

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By stat. 5 *G*. 4. *c*. 84. § 18. It is enacted, that it shall be lawful to keep to hard labour every offender under sentence or order of transportation, while he or she shall remain in the common gaol, if his or her health shall permit, and if one or more of the visiting justices of such gaol shall give a written order to that effect; and that it shall be lawful for one of H. M.'s principal secretaries of state, if he shall think fit, to order that any such offender be removed from the common gaol to the house of correction, and there kept to hard labour.

5 G.4. c.84. Convicts may be kept to hard labour, and may be removed to house of correction.

And by § 19. the time during which any offender shall continue in any gaol or house of correction, or in any such place of confinement as aforesaid, under sentence or order of transportation or banishment, shall be taken and reckoned in discharge or part discharge of the term of his or her transportation or banishment.

Time of imprisonment to be deemed part of term.

§ XIV. (c) Delivery—Supply on Discharge.

[4 G. 4. c. 64. § 16. 39.—5 G. 4. c. 85. § 22—26.]

By stat. 4 *G*. 4. *c*. 64. § 16. It is enacted, that if H. M. shall, on the recommendation of the justices in quarter sessions assembled, be graciously pleased to shorten the duration of such prisoner's confinement, such prisoner shall, upon his or her discharge, together with necessary clothing, receive such sum of money for his or her subsistence as the visiting justices for the time being shall think proper; so as such sum shall not exceed

4 G.4. c.64. Allowance on discharge.

4 G. 4. c. 64. *twenty shillings*, nor be less than *five shillings*, in case such offender shall have been confined for the space of one year, and so in proportion for any shorter term of confinement; and such sums of money, as also the expence of such clothing, shall be paid out of the county rate, or other rate applicable to the expences of prisons.

For supplying to prisoners discharged from prison the means of returning to their home, &c.

By § 39. After reciting that it is desirable that prisoners discharged from prison should be supplied with the means of returning to their families, or to their place of settlement, or to some place of employment, where they may be engaged in a life of honest labour for their maintenance, and prevented from pursuing evil courses; it is enacted, that it shall be lawful for any one or more of the visiting justice or justices of any prison to which this act shall extend, from whence any prisoner shall be discharged, to direct that such moderate sum of money shall be given and paid to any and every such prisoner so discharged, who shall not have the means of returning to his or her family or place of settlement, or resorting to any place of employment or honest occupation, as in the judgment of such justice or justices shall be requisite and necessary for such purpose, under all the circumstances attending the case of any such prisoner; and that such sum of money shall be paid by the keeper of such prison to or for the use of such prisoner, for the purpose aforesaid; and that all such sums shall be provided for, either out of such bequests or benefactions as aforesaid, or in such manner as is by this act directed with respect to the expence of the support and maintenance of the prisoners in such prisons respectively.

5 G. 4. c. 85. Discharged prisoners to be afforded means of returning to their place of settlement.

By stat. *5 G. 4. c. 85. § 22.* reciting, whereas it is desirable that more effectual means should be afforded, whereby prisoners discharged from prison should be enabled to return to their place of settlement; it is enacted, that when any prisoner discharged from prison shall be desirous of being supplied with the means of so returning, it shall and may be lawful for any two visiting justices of such prison, upon application from such prisoner, to take the examination in writing upon oath of such prisoner, as to his or her last legal place of settlement; and upon such examination, and such other evidence as the said visiting justices may be able to procure, it shall be lawful for the said visiting justices, if they shall so think fit, to afford to such prisoner the means of returning to his or her place of last legal settlement, in the manner hereinafter directed.

Engraved or printed forms of passes to be provided for use of visiting justices.

§ 23. Enacts, that it shall be lawful for the justices of the peace of each and every county, riding, or division, in *England*, in their general or quarter sessions assembled, to cause engraved copper plates or printed forms of passes to be provided, according to the form in schedule (B.) annexed to this act, bearing H. M.'s arms, and sealed with the county seal, or with a seal to be specially provided for that purpose; and the said justices may cause the same to be issued to the keepers of the several prisons within their respective counties, ridings, or divisions, for the use of the visiting justices of each such prison, whenever any prisoner or prisoners discharged from or about to be discharged from such prison shall apply to be furnished with the same; and the said visiting justices shall, if after a due consideration of the circumstances they shall deem it expedient, fill up the blanks in every such pass, and certify the same, and make out a route in the proper

column for the purpose, of each such prisoner, and for the child or children, if any, of each such prisoner, specifying the place to which such prisoner and such child or children is or are going, and the time to which the said pass is (except in cases of sickness or unavoidable accident) limited, in order that such prisoner may receive such allowances as are authorised by this act, not exceeding 1½*d.* *per* mile for such prisoner, and 1*d.* *per* mile for each child, which from being in a state of nurture or without other protection may have been confined in prison with such prisoner. 5 G.4. c.85.

§ 24. Enacts, that upon the production of such pass to any overseer of the poor of any place through which such discharged prisoner shall proceed, according to the route specified in such pass, he shall, out of any money in his hands applicable to the relief of the poor, pay such discharged prisoner an allowance not exceeding the rate *per* mile specified in such pass as aforesaid, for the number of miles to the next city, town, or place to which he or she may be going, and he shall indorse on such pass the money so paid, and take a receipt for the same from the discharged prisoner, signed with his or her hand or mark.

Overseers of the poor to pay a certain allowance to prisoners on producing their pass.

§ 25. Enacts, that the said sums so advanced by any overseer shall, upon production and delivery of such receipt to the treasurer of the county, riding, or division in which the parish or place of such overseer, (*a*) be repaid to such overseer, for the use of the fund for the relief of the poor of such parish or place, by the said treasurer.

County treasurer to repay overseer money advanced.

§ 26. Enacts, that every such discharged prisoner shall, at the last place of his or her receiving any allowance under this act, deliver up such pass to the overseer of the poor advancing such allowance, who shall transmit the same to the keeper of the prison from which such prisoner shall have been discharged; and if there be indorsed upon such pass, or upon the cover thereof, the words "pass of a discharged prisoner," and the said pass be sent without a cover, or in a cover open at the sides, and without any paper or thing inclosed therein, and without any writing other than the matter of such pass and than the superscription upon the same, or upon the cover thereof, such pass shall be charged with the usual rate of postage at the post-office of the town or place from which it shall be so sent, but the amount of the said postage shall be remitted and returned to the keeper of such prison on his producing such pass to the postmaster of the town or place to which such pass shall be sent as aforesaid; provided that such keeper shall have first signed the declaration contained in the schedule to this act annexed, and that such declaration shall have been attested by one of the visiting justices of such prison, in the manner prescribed in the said schedule.

Discharged prisoner shall deliver up his pass at the last place of receiving allowance.

§ XIV. (*d*) Escape or Attempt to escape. See Vol. I. *tit.* Escape.

[Stat. 4 G. 4. c. 64. § 43, 44.]

If the gaoler voluntarily suffer a prisoner to escape, he shall be punished in the same manner as the prisoner ought to have been who escaped; and if he negligently permit him to escape, he shall

Voluntary escape.

Negligent escape.

(*a*) The words "is situate," appear to be wanting.

be punished by fine and imprisonment. And the sheriff shall answer for him. 2 *Haw.* *c.* 19. § 22. *et seq.* 5 *Mod.* 415, 416.

And if a prisoner charged with felony break a gaol, it is said that this seems to be a negligent escape; because there wanted either the due strength in the gaol that should have secured him, or the due vigilance in the gaoler or his officers that should have prevented it. 1 *Hale*, 600.

Voluntary escape.

The principal gaoler is only fineable for the voluntary escape of a felon suffered by his deputy; for no one shall suffer capitally for any crime, but he who is actually guilty of it. 2 *Haw.* *c.* 19. § 27.

Negligent escape.

But for a negligent escape suffered by his bailiff, the sheriff is as much liable to answer as if he had actually suffered it himself; and the court may charge either the sheriff or bailiff for it; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Haw.* *c.* 19. § 29.

4 G.4. c.64. Conveying vizors, &c. into prisons to assist prisoners to escape.

By stat. 4 *G.* 4. *c.* 64. § 43. It is enacted, that if any person shall convey or cause to be conveyed into any prison to which this act shall extend, any mask, vizor, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoners, and the same shall deliver or cause to be delivered to any prisoner in such prison, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper of such prison, every such person shall be deemed to have delivered such vizor or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape; and if any person shall, by any means whatever, aid and assist any prisoner to escape or in attempting to escape from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony, and being convicted thereof, shall be transported beyond the seas for any term not exceeding fourteen years.

Transportation for assisting prisoners to escape.

Method of trial and conviction of offenders making escapes, &c.

§ 44. And, to the intent that prosecutions for escapes, breaches of prison, and rescues, may be carried on with as little trouble and expence as is possible, be it enacted, that any offender escaping, breaking prison, or being rescued therefrom, may be tried either in the jurisdiction where the offence was committed, or in that where he or she shall be apprehended and retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping or attempting to escape, or having broken prison, or having been rescued, or against any other person or persons concerned therein, or aiding, abetting, or assisting the same, a certificate given by the clerk of assize, or other clerk of the court in which such offender shall have been convicted, shall, together with due proof of the identity of the person, be sufficient evidence to the court and jury of the nature and fact of the conviction, and of the species and period of confinement to which such person was sentenced.

§ XIV. (*e*) Punishment of Refractory.

[4 G. 4. c. 64. § 41, 42.]

4 G.4. c.64. Power of the keeper of a prison to punish certain offences.

By stat. 4 *G.* 4. *c.* 64. § 41. It is enacted, that the keeper of every prison shall have power to hear all complaints touching any of the following offences; (that is to say,)

1stly. Disobedience of any of the rules of the prison. 4 G.4. c.64.

2dly. Assaults by one person confined in such prison upon another, when no dangerous wound or bruise is given.

3dly. Profane cursing and swearing.

4thly. Any indecent behaviour, and any irreverent behaviour at chapel, all of which are declared to be offences by this act, if committed by any description of prisoners.

5thly. Absence from chapel without leave.

6thly. Idleness or negligence in work, or wilful mismanagement of it, which are also declared to be offences by this act, if committed by any prisoner under charge or conviction of any crime; and the said keepers may examine any persons touching such offences, and may determine thereupon, and may punish all such offences by ordering any offender to close confinement in the refractory or solitary cells, and by keeping such offenders upon bread and water only, for any term not exceeding three days.

Further punishment of refractory prisoners by visiting justices, &c.

§ 42. It is enacted, that in case any criminal prisoner shall be guilty of any repeated offence against the rules of the prison, or shall be guilty of any greater offence than the gaoler or keeper is by this act empowered to punish, the said gaoler or keeper shall forthwith report the same to the visiting justices, or one of them for the time being; and any one such justice, or any other justice acting in and for the county, or riding or division of a county, or for the district, city, town, or place to which such prison belongs, shall have power to inquire upon oath, and to determine concerning any such matter so reported to him or them, and to order the offender to be punished by close confinement for any term not exceeding one month, or by personal correction in the case of prisoners convicted of felony, or sentenced to hard labour.

§ XIV. (f) Removal in certain Cases.

[31 C.2. c.2. § 9. — 24 G.3. sess.2. c.56. § 12. — 4 G.4. c.64. § 51, 52, 53.]

Justices in session may remove prisoners in case of want of repair of prison, or of contagious disease, and back again when the cause is removed.

By stat. 4 *G.*4. *c.*64. § 51. It is enacted, that whenever the justices in general or quarter sessions assembled shall deem it necessary that the prisoners, or any part of them, shall be removed from any house of correction within their jurisdiction, in order that the same may be repaired, improved, enlarged, or rebuilt, or on account of any contagious or infectious disease therein, or of the over-crowded state of such house of correction, or for any of the purposes of this act, it shall and may be lawful for the said justices, by an order in writing to be signed by the chairman of such general or quarter sessions, to direct the keeper of such house of correction to remove such prisoners to such other prison or place of confinement within their jurisdiction as the said justices shall appoint, and to confine such prisoners therein during the time such necessity shall exist; and that when such house of correction shall be repaired, enlarged, improved, or rebuilt, it shall be lawful for the said justices, by a like order in writing, to direct the said keeper to remove to the house of correction so repaired, enlarged, improved, or rebuilt; or when such contagious disease shall have

4 G.4. c.64.

In case of county gaols, notice to be given to sheriff, who shall remove such prisoners.

ceased to exist, or the purposes for which the prisoners shall have been so removed shall have been answered, to remove back to the house of correction from whence the prisoners came all such prisoners as shall then remain in his custody; and that if for any of the causes above recited, the said justices so assembled as aforesaid shall deem it necessary to remove the debtors and other prisoners from any common gaol, the said justices shall give due and sufficient notice thereof in writing to the sheriff of such county, riding, division, city, or town, whereupon it shall be lawful for the said sheriff to remove such debtors and other prisoners to such prison or other place of confinement within his jurisdiction as the justices with the consent of the said sheriff shall appoint, and to confine them therein during the time such common gaol shall be repairing, enlarging, improving, or rebuilding, or during the continuance of such contagious disease on account of which the said prisoners were removed, or during such time as shall be requisite for any purposes of this act; and that when such gaol shall be made fit for the reception and safe keeping of such debtors and other prisoners, then it shall be lawful for the said sheriff to remove thither all such prisoners as shall then be in his custody; and further, if a new common gaol shall be erected, or a prison previously used for other purposes shall be adapted to the use of a common gaol, and the justices in general or quarter sessions assembled shall, with the consent of the sheriff, order and declare that from a day to be named such new gaol, or prison newly adapted to such purpose, shall become the common gaol, it shall be lawful for the sheriff on that day, or at any time thereafter, to remove all prisoners in his custody to the last-mentioned gaol or prison.

In cases where immediate removal of prisoners is necessary, visiting justices empowered to order the same.

§ 52. Whenever any contagious disease or other emergency shall render necessary the immediate removal of the prisoners, or any of them, confined in any gaol or house of correction, and that previous thereto it shall be impossible to obtain for such purpose the order of the justices in general or quarter sessions assembled, it shall and may be lawful for the visiting justices of such prison, and they are hereby empowered to issue an order under their hands and seals to the keeper of every such prison, to remove such prisoners, or any of them, to such other prison or other place of confinement within their jurisdiction as shall be specified in such order.

Order of such visiting justices shall be laid before sessions.

§ 53. Provided always, that every such removal shall be subject to all such restrictions as to its duration as is hereby required and directed, and that every such order of visiting justices shall be laid before the justices assembled at the general or quarter sessions of the peace which shall be held next after such order shall have been made: provided also, that the prisoners confined in any common gaol of any county, city, town, or place, shall not be removed without the consent of the sheriff of such county, city, town, or place: Provided also, that no removal made under the authority of this act shall be deemed or taken to be an escape; and that nothing herein contained shall extend to discharge the sheriff or other officer from being answerable for the actual escape of any prisoner in his custody.

In such removals from county gaols sheriff's consent necessary, and no such removal to be deemed an escape.

31 C.2. c.2. When only to be removed.

By stat. 31 *C.* 2. *c.* 2. § 9. If any person shall be committed to any prison for any criminal or supposed criminal matter, he shall

not be removed from thence, unless it be by *habeas corpus* or some other legal writ, or where he is removed from one prison or place to another within the same county, in order to his trial or discharge, or in case of sudden fire or infection, or other necessity, on pain that the person making out and signing or countersigning any warrant for such removal, and the person executing the same, shall forfeit for the first offence 100*l.* and for the second 200*l.* to the party grieved, by action of debt, bill, plaint, or information, in the king's courts at *Westminster.* (*a*) 31 C 2. c.2.

And by stat. 24 *G.* 3. *sess.* 2. *c.* 56. § 12. After reciting that "whereas there are several persons confined in the county and city gaols in *England* and *Wales,* under sentences and orders made by one or more justice or justices of the peace at their sessions or otherwise upon conviction in a summary way, without the intervention of a jury," it is enacted, "that it shall be lawful for any justice of assize or great sessions, or any two or more justices of the peace within whose jurisdiction such gaol is situate, to remove any such person or persons to *any house of correction* within the said jurisdiction, there to be confined, and to remain in execution of such sentence or order."

24 G.3. sess.2. c.56. Removal of prisoners confined under justices' orders, upon summary convictions, to houses of correction within the same jurisdiction.

§ XV. Annual Report to the Secretary of State.

[4 G. 4. *c.* 64. § 24.]

By stat. 4 *G.* 4. *c.* 64. § 24. A general report, founded on the report of the visiting justices, on the report of the chaplain or chaplains, and on the certificates of the keepers of the several prisons, shall be prepared by the clerk of the peace, and submitted to the justices assembled at every *Michaelmas* quarter sessions; and when aproved by the justices at such sessions, such report shall be signed by the chairman of such sessions, and shall be by him transmitted (together with a copy of the schedule (B.) delivered by the gaoler) to one of H. M.'s principal secretaries of state; a copy of which report, with the said schedule attached to it, shall be laid before both houses of parliament, within one month next ensuing, if parliament shall be sitting, or within one month after the time when parliament shall next sit.

4 G.4. c.64. A general report to be forwarded annually to the secretary of state to be laid before parliament.

§ XVI. Fines, Penalties, Recovery, and Application — Appeal.

[4 G. 4. c. 64. § 69, 70, 71, 72, 73. 75.]

By stat. 4 *G.* 4. *c.* 64. § 69. It is enacted, that all fines, forfeitures, and penalties imposed by this act, or which shall be imposed by virtue of any rule to be made in pursuance thereof, shall, on conviction of the offender before any one justice of the peace within his jurisdiction, be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such

How fines and penalties shall be recovered and applied.

(*a*) In what cases gaolers are bound to deliver a copy of warrant of commitment on demand to prisoners, see Bail, (Habeas Corpus Act,) Vol. I.

4 G. 4. c. 64. justice of the peace, who is hereby authorised to hear and examine witnesses on oath or affirmation, on any complaint, and to determine the same; and all such fines, forfeitures, and penalties, the application whereof is not herein-before particularly directed, shall be paid from time to time to the treasurer of the county, riding, division, district, city, town, or place for the time being, and shall be applied and disposed of in aid of the rate applicable to the purposes of this act, and to or for no other use or purpose whatsoever; and for want of sufficient distress, the offender shall be committed to the common gaol or house of correction, for such term not exceeding six calendar months, nor less than one month, as such justice shall think proper.

Form of conviction.

§ 70. And for the more easy and speedy conviction of offenders against this act, it is enacted, that the justice before whom any person shall be convicted of any offence against this act shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; *videlicet*,

BE it remembered, that on ——— *in the year of our lord* ——— *A. B. is convicted before me,* C. D., *one of his majesty's justices of the peace for the* ——— *of* ———, *for that the said* A. B. [specifying the offence and the time and place when and where the same was committed, as the case shall be,] *and the said* A. B. *is for his said offence adjudged by me, the said justice, to forfeit and pay the sum of* ——— *or to be imprisoned in* ——— *for the space of* ——— [as the case shall be]. *Given under my hand and seal the day and year first above mentioned.*

Appeal to quarter sessions.

§ 71. Provided always, that if any person shall think himself or herself aggrieved by any conviction of any justice, in pursuance of this act, such person may appeal to the justices of the peace at any quarter sessions of the county, riding, division, district, city, town, or place wherein such conviction shall have taken place, within four calendar months after the cause of such complaint shall have arisen, such appellant first giving or causing to be given ten clear days' notice at least in writing of his or her intention to bring such appeal, and of the matter thereof, to the justice or justices before whom the conviction shall have been had, and to the clerk of the peace for the county, riding, or division, district, city, town, or place, in which such conviction shall have been had, and within two days after such notice entering into recognizance before some justice for such county, riding, or division, district, city, town, or place, with two sufficient sureties, conditioned to try such appeal, and abide the order of, and to pay such costs as shall be awarded by the justices at such session; and the justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the matter of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such session shall be final, binding, and conclusive, to all intents and purposes.

Conviction not to be quashed for want of form.

§ 72. No order made touching any of the matters in this act contained, nor any conviction of any offender against this act,

shall be quashed for want of form, or be removed or removable by *certiorari*, by any other writ or process whatsoever into any of H. M.'s courts of record at *Westminster;* and where any distress shall be made for any fine, penalty, or sum of money to be levied by virtue of this act, the distress itself shall not be deemed to be unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto; nor shall such party be deemed a trespasser *ab initio*, on account of any irregularity which shall be afterwards done by the party distraining, but the person aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in an action upon the case; but no plaintiff shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends shall have been made by or on behalf of the party distraining before such action brought. 4 G.4. c.64.

§ 73. If any suit or action shall be prosecuted against any person for any thing done in pursuance of this act, such person may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done by authority of this act; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue his or her action after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover double costs, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon.

Persons sued for any thing done in pursuance of this act may plead the general issue.

§ 75. All actions, suits, and prosecutions to be commenced against any person for any thing done in pursuance of this act shall be laid and tried in the county where the facts were committed, and shall be commenced within six calendar months after the fact committed, and not otherwise.

Venue to be laid in the county where the fact is committed.

§ XVII. Saving of Rights.

[4 G. 4. c. 64. § 9. 77.]

By stat. 4 G. 4. c. 64. § 9. Nothing in this act contained shall extend to take away, lessen, vary, alter, or affect any right, privilege, or franchise, which before the passing of this act any mayor, bailiff, or justice of the peace for the time being of any city, town, or liberty, having a separate jurisdiction, had by means of any grant, charter, or special or local act of parliament, to commit prisoners to the gaol or house of correction of any county, riding, or division.

Rights of mayors, &c. having separate jurisdictions not to be affected.

§ 77. Where any prison is situate on lands of the king's majesty, in right of his royal crown, or of his duchy of *Lancaster*, or of the duchy of *Cornwall*, such lands, with their appurtenances, shall remain for ever unalienable, so long as they shall be used for the purpose of such prison.

Where prisons built on crown land, the land to remain unalienable.

§ XVIII. Debtors—Arrest—Confinement—Treatment.

[32 G. 2. c. 28. § 1, 2, 3. 11.—4 G. 4. c. 64. § 5.]

32 G. 2. c. 28. Arresting and carrying to gaol.

By stat. 32 G. 2. c. 28. § 1. (a) No sheriff, under-sheriff, bailiff, or other officer, shall carry any person by him arrested, or being in his custody by virtue of any writ or other process, to any tavern, alehouse, or other public victualling or drinking house, or to the private house of any such officer, or of any tenant or relation of his, without his free and voluntary consent; nor charge him for wine, beer, ale, victuals, tobacco, or other liquor or thing whatsoever, but what he shall freely call for of his own accord; nor cause or procure him to call or pay for any such, but what he shall call for voluntarily; nor demand, take, or receive, directly or indirectly, any other or greater sum than is by law allowed; nor take any reward, gratuity, or money, for keeping him so arrested out of gaol; nor carry him to gaol within 24 hours from the time of the arrest, unless such person arrested shall refuse to be carried to some safe and convenient dwelling-house of his own appointment within some city, borough, corporation, or market-town, (if there arrested,) otherwise within three miles from the place of arrest, so as such dwelling-house be not the house of the person arrested, and be within the respective division or liberty.

Officer taking for lodging of prisoner more than allowed.

§ 2. No sheriff, &c. or other officer shall take more for one or more night's lodging, or for a day's diet, or other expences of any person under arrest, than shall be allowed by order of sessions; which sessions shall make order therein, and vary the same from time to time as they shall see occasion; and shall cause a copy of every such order and of every variation or alteration thereof, signed by the clerk of the peace, to be put and kept up in some conspicuous place in the sessions-house, or other proper place, that the same may be there seen and examined.

A copy of justice's order hung up in sessions-house, &c.

Sheriffs and secondaries of compters, to deliver printed copies of act to bailiffs, &c.

§ 3. And every sheriff, and other person intrusted with the execution of process, shall deliver a printed copy of the several clauses in this act relating to bailiffs and other persons to be employed under them, to every such bailiff and other person; and shall also make it part of the condition of the bond to be given by such bailiff or other person, that he will show and deliver a copy of the said clauses to every person he shall arrest and go with to any public or other house where any liquor shall be sold, and that he will permit every person so arrested, or any friend of his, to read over the same clauses before any liquor, meat, or victuals shall be there called for or brought to such person so under arrest; and if any bailiff shall offend in the premises, he shall, besides the breach of the condition of the bond, be deemed guilty of a misdemeanor in the execution of the process, and punishable as such by virtue of this act.

Redress of grievances.

§ 11. On the petition in term-time of any person being or having been under arrest, complaining of any exaction or abuse by the gaoler or other officer unto any of the courts of record at

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(a) Commonly called the Lords' Act, from its having originated in the House of Lords.

Westminster, from whence the process issued, or in vacation-time, to any of the judges of such court, or to the judges of assize or great sessions, or judges of any other court of record from whence such process issued, they shall hear and determine the same in a summary way, and make such order thereupon for redressing the abuses, and for punishing the offender, and for making reparation to the party injured, as they shall think just, together with full costs of the complaint; the same to be enforced by attachment, or in any other manner as other orders of the said courts or judges may be enforced. 32 G.2. c.28.

By stat. 4 *G*.4. c. 64. § 5. It is provided that prisoners for debt may be removed to and shall always be confined in the part or parts of the building, or united or contiguous buildings, which shall be ascertained or be appropriated as and for the gaol of the county, division, city, town, or place; and such removal shall not be deemed or taken to be an escape. 4 G.4. c.64. Prisoners for debt to be confined in that part of the building appropriated for the gaol.

See § 49. *ante*, p. 685.

By stat. 52 *G*. 3. *c*. 160. County justices may order parochial relief to debtors confined in other than county gaols under certain circumstances. *For this act*, see Vol. IV. title Poor—*Relief* to debtors.

§ XIX. Prisons of the King's Bench and Marshalsea.

[53 G. 3. c. 113.]

By stat. 53 *G*.3. *c*. 113. After reciting stat. 43 *Eliz*. *c*. 2., whereby the justices, at the general sessions, were directed to rate every parish to a certain sum, in manner therein expressed; and that all surplusage of money which should remain in the stock of any county, should, by the discretion of the justices of the peace in their quarter sessions, be bestowed for the relief of the poor hospitals in that county, and for other charitable purposes: and reciting stat. 11 *G*. 2. *c*. 20., passed in aid of stats. 43 *Eliz*. *c*. 2., and 12 *G*. 2. *c*. 29.; and that the sums secured to be paid by the said acts are not sufficient for the relief of the poor prisoners confined in the said *K. B.* and *Marshalsea* prisons; and that no adequate relief has been provided for the poor prisoners confined in the *Fleet* prison; and that *Bethlem* hospital is a charity for the reception and cure of lunatics and distracted persons from all parts of the kingdom, and from H. M.'s fleets and armies; and any surplus which shall remain of the monies provided by this act, after relieving the poor prisoners in the said prisons, may with great propriety be bestowed towards the relief of the said hospital: the said acts so far as the same relate or apply to the yearly sums provided for the relief of the poor prisoners confined in the *K. B.* and *Marshalsea* prisons, and also stat. 11 *G*. 2., are repealed. 53 G.3. c.113.

§ 2. And every treasurer of every county and division of a county mentioned in the schedule to this act annexed, shall, on or before *Aug*. 1st in every year, pay out of the public stock or rates of such county and division of a county respectively the several sums of money specified in the schedule to this act annexed, in manner following; (that is to say,) the sums for the relief of the prisoners confined in the *K. B.* and *Marshalsea* prisons to be paid to the Treasurers directed to pay the sums mentioned in the schedule out of the county rate.

53 G.3. c.113. treasurer for the county of *Surrey;* and the sums for the relief of the prisoners confined in the *Fleet* prison to be paid to the treasurer or chamberlain of the city of *London.*

To whom treasurer is to pay the money.

§ 3. The treasurer for the time being of the county of *Surrey* shall from time to time pay the sums of money to be received by him from the said treasurers, and also the sums to be paid out of the public stock or rates of the said county of *Surrey,* for the relief of the prisoners in the *K. B.* and *Marshalsea* prisons, to such sufficient person or persons residing near the said prisons respectively, at such times and in such manner as the justices of the peace for the county of *Surrey,* or the major part of them, at their general quarter sessions, shall from time to time order and direct.

§ 4. To whom the chamberlain of *London* is to pay the money.

Receipts of treasurers to be sufficient discharges.

§ 5. Receipts signed by the treasurer for the time being of the county of *Surrey,* and the treasurer or chamberlain for the time being of the city of *London,* for any monies payable to them respectively by virtue of this act, shall be sufficient discharges for the same; and receipts signed by any person or persons appointed by the justices of the peace of the county of *Surrey* and city of *London* respectively, at their quarter sessions respectively, to receive any monies payable by virtue of this act, shall be sufficient discharges to the treasurer for the county of *Surrey,* and the treasurer or chamberlain of the city of *London* respectively.

Courts of K. B. and C. P. may enforce compliance with the regulations of the act.

§ 6. If any treasurer shall neglect or refuse to pay over any such respective sums of money as ought to be paid by him to the treasurer of the county of *Surrey,* and the treasurer or chamberlain of the city of *London* respectively as aforesaid, or any treasurer of the county of *Surrey,* or treasurer or chamberlain of the city of *London,* shall neglect or refuse to pay over such respective sums of money as ought to be paid by him respectively by virtue of this act, then, upon the certificate or certificates, on oath, of the treasurer or treasurers, person or persons, to whom the same respectively ought to be paid, being delivered to either of H. M.'s courts of *K. B.* and *Common Pleas,* or to the court of *Marshalsea,* of such neglect or refusal, the said courts, or either of them, may make a rule on every such treasurer so neglecting or refusing, requiring such treasurer to pay the money so reported or certified to be due as aforesaid; and obedience to such rules respectively shall be enforced by the said courts, as rules of the said courts respectively are usually enforced.

Treasurers to register their names and places of abode.

§ 7. Every person who now is or hereafter shall be elected or appointed treasurer of any county, or division of a county, named in the schedule to this act annexed, shall, within one calendar month after *Aug.* 1st, or within one calendar month after his election or appointment respectively into such office of treasurer, transmit his name and place of abode to the clerk of the crown in H. M.'s said court of *K. B.,* to be by him entered or registered in a book to be kept for that purpose, for which entries no fee or reward shall be taken; and in case of neglect or refusal, upon the report of the said clerk of the crown, made to the said court of *K. B.,* of such neglect or refusal, every such treasurer shall be liable to be proceeded against as in case of neglecting or refusing to pay such money as aforesaid.

Charge of rules of court to be

§ 8. As often as there shall be occasion for the said courts, respectively, to make any rule as aforesaid, on any of the said trea-

surers in pursuance of this act, the whole cost and charge of making such rule, and all subsequent charges arising therefrom, shall be paid by the treasurer whose default or neglect shall cause the making of such rule.

53 G.3. c.113.

paid by treasurer, in case of his neglect.

§ 9. The sums provided by this act shall from time to time be distributed by the person or persons to whom the same respectively shall be directed to be paid as aforesaid, by weekly payments, for the relief of such prisoners as shall from time to time be ordered to be relieved, in manner hereinafter mentioned.

Money to be weekly distributed to prisoners.

§ 10. Any justice of the peace for the county of *Surrey* may order such relief as he shall think proper to be given to any prisoner confined in the said *K. B.* or *Marshalsea* prisons, and any alderman or justice of the city of *London* may order such relief as he shall think proper to be given to any prisoner confined in the said *Fleet* prison, but subject nevertheless to the provisions hereinafter contained, and to any rules, orders, and regulations which shall be made as hereinafter is mentioned: provided always, that the sum to be given to any one prisoner shall not exceed 6*d. per diem*.

Limiting the sum to be allowed to prisoners.

§ 11. Provided always, that no prisoner who shall be charged in execution for debt shall be relieved by virtue of this act after the first day of the term next following the time when he shall be charged in execution.

No prisoner charged in execution to be relieved after the first day of the next term.

§ 12. Provided always, that no prisoner shall be ordered to be relieved by virtue of this act until he shall first have made oath before a judge of one of the courts of law at *Westminster*, or of the *Marshalsea*, or a commissioner appointed by one of the said judges to take affidavits, that he is not worth 10*l.* in all the world, and that he cannot subsist himself without the relief or assistance provided by this act; and for wilfully forswearing or perjuring himself, he shall suffer as a person convicted of wilful and corrupt perjury.

No prisoner to be relieved possessed of property above a certain sum.

§ 13. That no prisoner shall be relieved who shall have become supersedeable, or entitled to be discharged under any act for the relief of insolvent debtors.

§ 14. Directing the appropriation of surplus monies.

§ 15. Accounts to be kept and verified upon oath.

§ 16. Justices empowered to make regulations at their sessions, in addition to the provisions of the act.

The SCHEDULE to which this Act refers.

53 G. 3. c. 113.

COUNTIES AND DIVISIONS.		The SUMS to be paid by them for the Relief of the Prisoners in the Prisons of		
		King's Bench.	Fleet.	Marshalsea.
		£.	£.	£.
Bedford	-	5	5	—
Berks	-	10	10	—
Bucks	-	10	5	—
Cambridge	County	5	5	—
Cambridge	Isle of Ely and Town of Cambridge	5	5	—
Chester	-	10	10	—
Cornwall	-	10	5	—
Cumberland	-	10	5	—
Derby	-	10	10	—
Devon	-	20	15	—
Dorset	East Division	5	5	—
	West Division	5	5	—
Durham	-	15	10	—
York	East Riding	10	10	—
	North Riding	15	10	—
	West Riding	30	20	—
Essex	East Division	10	5	—
	West Division	10	5	25
Gloucester	-	15	10	—
Hereford	-	10	5	—
Hertford	-	10	10	—
Huntingdon	-	5	5	—
Kent	East Division	10	5	—
	West Division	10	5	25
Lancaster	-	30	25	—
Leicester	-	10	10	—
Lincoln	Holland Division	5	5	—
	Kesteven Do.	5	5	—
	Lindsay Do.	10	5	—
Middlesex	-	100	50	200
Norfolk	-	15	10	—
Northampton	East Division	5	5	—
	West Division	5	5	—
Northumberland	-	15	10	—
Nottingham	North Division	5	5	—
	South Division	5	5	—
Oxford	-	10	5	—
Rutland	-	5	5	—
Salop	-	10	10	—
Somerset	West	10	5	—
	East	10	5	—
Southampton	-	15	10	—

53 G.3. c.113.

COUNTIES AND DIVISIONS.	The SUMS to be paid by them for the Relief of the Prisoners in the Prisons of		
	King's Bench.	Fleet.	Marshalsea.
	£.	£.	£.
Stafford - - - -	15	10	—
Suffolk { Beccles Division - -	—	5	—
Suffolk { Woodbridge Do. - -	5	—	—
Suffolk { Bury St. Edmund's Do. -	5	5	—
Suffolk { Ipswich Do. - -	5	—	—
Surrey - - - -	50	40	50
Sussex { East Division - -	10	5	—
Sussex { West Division - -	10	5	—
Warwick - - - -	15	10	—
Westmorland { East Ward - -	5	—	—
Westmorland { Kendal Ward - -	—	5	—
Wilts - - - -	15	10	—
Worcester - - - -	10	10	—
Anglesea - - - - -	2	2	—
Brecon - - - - -	2	2	—
Cardigan - - - - -	2	2	—
Carmarthen - - - - -	3	3	—
Carnarvon - - - - -	2	2	—
Denbigh - - - - -	3	3	—
Flint - - - - -	2	2	—
Glamorgan - - - - -	3	3	—
Merioneth - - - - -	2	2	—
Monmouth - - - - -	3	3	—
Montgomery - - - - -	2	2	—
Pembroke - - - - -	2	2	—
Radnorshire - - - - -	2	2	—

§ XX. Of County Gaols in Counties divided into Ridings or Divisions; and of Sessions for such Gaols.

[5 G. 4. c. 12. — c. 85. § 21.]

By stat. 5 *G.* 4. *c.* 12., passed 23d *March*, 1824, and intituled, "*An act to facilitate in those counties which are divided into ridings or divisions the execution of an act of the last session of parliament* (*viz.* stat. 4 *G.* 4. *c.* 64.) *for consolidating and amending the laws relating to the building, repairing, and regulating of certain gaols and houses of correction in* England *and* Wales." After reciting, that by stat. 4 G. 4. c. 64. § 2. "it was (amongst other things) enacted, that there should be maintained at the expence of every county in *England* and *Wales* one common gaol, and that the regulations and provisions contained in the said act should extend, in manner therein mentioned, to every such gaol: and whereas in certain counties in *England* there are distinct commissions of the peace for the several ridings 5 G. 4. c. 12.

5 G.4. c.12.

and divisions into which such counties are divided, and distinct courts of sessions of the peace are holden for each of such ridings and divisions respectively, and in such counties there are no courts of general or quarter sessions holden for the whole county at large, in consequence whereof the provisions and regulations of the said act cannot in such counties be carried into execution: for remedy thereof, and in order to extend to such counties all the benefits of the said act:" it is enacted, "that in every county divided into ridings or divisions, having distinct commissions of the peace, there shall be held from time to time a court of sessions for the gaol of such county, of which court all the justices of the peace of every riding and division of such county shall be members; and any two of such justices shall be able to hold such court; and such court shall possess and exercise all the powers and authorities respecting the common gaol of such county, and all matters relating thereto, which are in and by the said recited act vested in the court of general or quarter sessions of the peace for any other county of *England*; and the justices of the peace for each of such ridings and divisions are hereby authorized as fully and effectually to perform and execute all the provisions and regulations of the said recited act, with respect to such county gaol, as justices of the peace for the county are in any other county of *England* authorized to do with respect to the gaol of their respective counties; and the said court of gaol sessions is hereby empowered to transact and do, within the counties so divided, all such matters and things appertaining to the authority of justices of the peace in sessions assembled, with respect to the county gaol, as are in other counties capable of being done by justices of the peace in their general or quarter sessions assembled; and where by the said act any thing is ordered to be done at any general or quarter sessions, or at any adjournment thereof, or at any subsequent general or quarter sessions or adjournment thereof, respecting the county gaol, then such things may be done at such gaol sessions, or at any adjournment thereof, or at one or more subsequent gaol sessions, in such ways and with such public notices as in the said recited act they are ordered or directed to be done by the general or quarter sessions or adjournment thereof."

In counties divided into ridings or divisions, a court of sessions for the gaol shall be held; and such court shall possess all the powers given by the former act respecting the common gaol of such county.

§ 2. Enacts, "That the sheriff of every county so divided into ridings or divisions shall, within 14 days next after the passing of this act, by notice to be published in *The London Gazette*, and in some of the public newspapers most usually circulated within his county, summon the justices of each of the ridings or divisions into which the same is divided, to meet at some place in or near the county gaol, to be by him specified in such notice, and at a time not exceeding one month after the first publication of such notice, and there to form a court of sessions for the county gaol, for the purpose of carrying into execution the regulations and provisions of the said recited act and of this act; and the said court being so constituted shall proceed to elect a chairman and a clerk; and the said court, and the chairman thereof, shall proceed to execute all those matters and things which were by the said recited act directed to be done by the court of quarter sessions of the peace held at *Michaelmas* next after the passing thereof, and by the chairman of that court, and to do all such other matters and things as may be necessary or proper in regard to the county gaol."

Sheriff to give notice of the holding such court.

Chairman and clerk to be appointed.

5 G. 4. c. 12.

By § 3. It is enacted, "That the clerk of the gaol sessions shall continue in his office until another shall be elected in his stead by the court of gaol sessions, and shall, with respect to the said recited act and this act, have and enjoy all the powers vested by the said recited act in the clerk of the peace of any county."

Clerk of gaol sessions to continue in office till another is appointed; with powers of clerk of peace.

By § 4. It is enacted, "That the clerk of the gaol sessions shall, on receiving a precept commanding him so to do, signed by any 2 justices of the peace acting for any of the ridings or divisions of the county, summon the justices to meet in a court of gaol sessions, by a notice to be published at least twice in some of the public newspapers most usually circulated in the county, which notice shall declare the day, hour, and place at which such court is to be held; and also that the said clerk, if the court of gaol sessions shall be dissolved without adjournment, or shall adjourn for a longer time than 3 calendar months, shall by a like notice, to be issued of his proper authority, without any precept in that behalf, summon a court of gaol sessions to be held within 3 calendar months next after such dissolution or last adjournment."

Notice of holding gaol sessions.

§ 5. Enacts, "That the sessions for the county gaol shall be held in some place in the gaol, or within one mile thereof, unless there shall be special reasons for the contrary, which shall be expressed in the precept to be directed to the said clerk as aforesaid; and if it shall be held in the gaol, or within such distance thereof as aforesaid, all matters done thereat touching the county gaol shall be legal, though the sessions be held in some place not within the county."

Place for holding sessions.

By § 6. It is enacted, "That the court of gaol sessions shall also elect a treasurer of the monies applicable to the repair of the county gaol, who shall not be the clerk of the said court; and the said treasurer shall receive and pay all monies to be raised for the repair of the county gaol, or to be disbursed by order of the court, and shall give discharges for the monies received, and apply the same as by such court shall be ordered, and shall keep a distinct account of such monies received and paid, and shall from time to time, when called on by the said court, account upon oath, if required, for all monies so by him received, and deliver in all vouchers respecting the same; and the said court shall from time to time appoint such salaries to such clerk and treasurer respectively as they shall think fit, to be paid out of the monies aforesaid; and such treasurer shall give such security for the faithful performance of his duty, as the court of gaol sessions shall direct."

Treasurer to be appointed.

By § 7. After reciting, "Whereas it is expedient that all the expences incurred respecting any county gaol, where the county is so divided as aforesaid, whether arising out of the provisions of the said recited act or of this act, or otherwise, should be discharged out of the county rates; and it is necessary to fix the proportions in which the several ridings or divisions shall contribute to such expences; and it may also be necessary from time to time to vary the said proportions:" it is enacted, "that where in any such county there are, at the time of passing this act, (23d *March*, 1824,) any fixed proportions in which such expences are or have been paid and borne, such proportions shall continue to be acted on, and the contribution shall be paid accordingly, till some alteration shall be made therein by the court of gaol sessions; and that where there are now no such fixed proportions,

Proportions of county rates to be paid by each riding or division.

5 G.4. c.12. the said court shall forthwith fix the proportions in which the contribution is to be made; and the said court shall also have power and authority to alter the said proportions from time to time; provided that no such alteration shall be made, unless the intention of making such alteration shall be expressed in the notice whereby the court is summoned, and shall be published for one month at the least before the court shall be held."

In case of any dispute as to the proportions in which the ridings or divisions are to contribute towards the expence of the gaol, the same shall be settled by arbitration.

§ 8. Enacts, "That when the court of gaol sessions shall order an alteration to be made in the proportions in which the ridings or divisions of the county are to contribute towards the expences of the county gaol, or shall negative a proposition for making such alteration, and any riding or division shall be dissatisfied therewith, it shall be lawful for the clerk of the peace of such riding or division, being thereunto authorized by an order of the court of quarter or gaol sessions of such riding or division, to apply to the justices of assize of the last preceding circuit, or of the next succeeding circuit, or to one of such justices, who shall by writing under their or his hands or hand nominate a barrister at law, not having any interest in the question, to arbitrate between the ridings or divisions; and such arbitrators shall summon the several clerks of the peace of the ridings or divisions interested in the matter in dispute to appear before him, at a time to be by him appointed, and there to produce all information touching the matter in dispute; and such arbitrator may, if he shall see fit, adjourn the hearing from time to time, and require all such further information to be afforded by either of the parties as shall appear to him meet and necessary; and shall, by his award in writing, determine the proportions in which such ridings or divisions shall contribute towards the said expences; and his award shall be final and conclusive between the parties for ten years, and until further order shall be made thereon by the court of gaol sessions; and such arbitrators shall also assess the *courts* (a) of the arbitration, and shall direct by whom and out of what fund the same shall be paid."

5 G.4. c.85. By stat. 5 *G*. 4. *c*. 85. § 21. Reciting, "that whereas by stat. 5 *G*. 4. *c*. 12. § 9. provision is made for settling by arbitration disputes between ridings and divisions as to the proportions in which they shall contribute to the expence of the county gaol, but by reason of some verbal inaccuracies in the said provision there may be some difficulty in acting thereon." It is enacted and declared, "that the clerk of the peace may be authorized to apply, to the justices of assize for the nomination of an arbitrator under stat. 5 *G*. 4. *c*. 12., by an order of the court or quarter or general sessions of the riding or division; and that one arbitrator shall be competent to exercise all the powers and authorities given to the arbitrator or arbitrators by the same act; and that such arbitrator shall assess the *costs* of the arbitration, and direct by whom and out of what fund the same shall be paid.

5 G.4. c.12. Order for money to be transmitted to treasurers of the several

By stat. 5 *G*. 4. *c*. 12. § 9. It is enacted, "that when and so often as the court of gaol sessions shall find it requisite to raise money for the purposes of the said recited act (4 *G*. 4. *c*. 64.) or of this act, they shall make an order accordingly, and their clerk shall forthwith transmit a copy of such order, signed by the chairman, together with the amount of the sum of money to be paid

(a) *Sic.* Should be "costs." See 5 G. 4. c. 85. § 21.

by virtue of it, according to the then existing proportions, by each riding or division, to the treasurers of the several ridings or divisions of the county; which treasurers shall forthwith out of the monies in their hands, or if those monies shall be insufficient, then so soon as sufficient monies shall come to their hands, pay the sum required to the treasurer of the county gaol, and take his receipt for the same." 5 G.4. c.12. ——— ridings or divisions.

By § 10. " When the monies necessary to be raised for the purposes of the said recited act or of this act shall exceed one half of the ordinary aggregate amount of all the annual assessments for the rates of the several ridings or divisions of any such county, taken on an average of all such rates for the last 7 years preceding, the court of gaol sessions may and is hereby authorized to mortgage all the rates of such county, by such instrument, and in such ways and means, and under such provisions of repayment, and with the same power of assignment, as in the said recited act are enacted respecting the mortgage of any county rates therein mentioned." Rates may be mortgaged for raising the money.

§ 11. Enacts, " That the Court of gaol sessions shall and is hereby required to charge all the rates upon the several ridings and divisions of the county, in the same manner and for the same purposes as in and by the said recited act the justices in their general or quarter sessions are authorized and required to charge the rates of any county having one rate for the whole; and all the ways, means, and methods by the said recited act directed and allowed, as to the repayment of monies borrowed and the interest thereof, and the accounts respecting the same, shall be kept and observed by the court of gaol sessions, respecting the monies borrowed on account of the gaol of any county so divided as aforesaid; provided that all the monies to be raised on the several ridings or divisions of any such county, for repaying money borrowed or the interest thereof, shall be raised in the same proportions as other monies for the purposes of the said recited act or of this act shall be raised at the time of such money being so raised." [See stat. 5 *G*. 4. *c*.85. § 20. as to power of justices to pay off sums borrowed by borrowing like sums at a lower rate of interest, *ante*, § VII.] Rates on each riding or division to be charged in same manner as rates on counties by recited act. Paying off sums borrowed.

By § 12. It is enacted, " that all reports and statements directed by the said recited act to be made to the general or quarter sessions, shall be transmitted on or before the first days of *January*, *April*, *July*, and *October*, to the clerk of the gaol sessions, and be by him laid before the court at the sessions." Reports to be transmitted, and laid before court of gaol sessions.

§ 13. Enacts, " that the chairman of the first court of gaol sessions held after the first day of *October* in each year, shall, within 14 days after the determination of such sessions, or any adjournment thereof, transmit to one of H. M.'s principal secretaries of state such account of proceedings, and such copies of rules and regulations, as in and by the said act are ordered to be transmitted by the chairman of the *Michaelmas* quarter sessions, and shall at the same time, or within three months afterwards, transmit such plans as in the said act are mentioned." Reports, &c. to be transmitted by chairman of court of gaol sessions to secretary of state.

By § 14. " The return directed to be made annually by the keeper of every prison, in the form contained in the schedule annexed to the said recited act, marked (B.), shall be annually made by the keeper of every gaol of every county so divided as aforesaid, and delivered to the clerk of the gaol sessions of such county, two weeks at least before the first day of *October* in each Returns from keeper of prisons to be delivered to clerk of gaol sessions.

5 G.4. c. 12. year; and such clerk shall on the said first day of *October* prepare a general report founded on the report of the visiting justices and that of the chaplain, and on the certificates and reports of the keeper of the said gaol, and on any other report or document respecting the said gaol, and shall lay the same before the next gaol sessions; and such report, when approved by such sessions, shall be signed by the chairman thereof, and shall be by him, together with a copy of the schedule (B.), transmitted to one of H. M.'s principal secretaries of state, for the purposes in the said recited act mentioned."

By whom convictions for recovery of fines, &c. shall be made.

§ 15. Enacts, "that if any matter or thing be done within any county so divided as aforesaid, for which any fine, penalty, or forfeiture is by the said recited act (4 *G.* 4. *c.* 64.) imposed and directed to be paid to the county treasurer, every conviction made in pursuance of the said recited act for such matter or thing shall be made by one or more justices of the peace of the riding or division in which the offence is committed; and all forfeitures, fines, and penalties thereon accruing, shall be paid to the treasurer of the county gaol for the purposes of this act."

Common gaol of county to be deemed within each riding or division.

By § 16. It is enacted, "that in the case of every county so divided as aforesaid, the common gaol of such county shall, for all purposes relative to the jurisdiction of justices of the peace, be deemed to be within and taken as part of each of the ridings and divisions of which such county is composed; and every justice of the peace for each of such ridings and divisions shall have like power and authority to execute all things appertaining to his office therein, as in any part of the riding or division to which his commission specially extends."

By § 17. This act shall be deemed a public act, and by § 18 might be altered in the then present session.

§ XXI. Contracts by Justices having Charge of any Gaol or House of Correction in any City, Town, Borough, Port, or Liberty, with the Justices having Charge of any Gaol of the adjacent County, Riding, &c., for Support in such last-mentioned Gaol of Prisoners committed thereto from such City, &c.

[5 G.4. c. 85. § 1, 2, 3, 4, 5, 6, 7.]

Justices having charge of gaols for cities, &c. may contract with justices having charge of county gaols for care of prisoners.

Stat. 5 G. 4. c. 85. (*a*) passed 21st *June*, 1824, reciting the passing of stat. 4 G. 4. c. 64., Enacts, that it shall be lawful for the justices of the peace, or any two of them, or for other persons having the government or ordering of any gaol or house of correction, in any city, town, borough, port, or liberty, to contract with the justices of the peace having authority or jurisdiction in and over any gaol or house of correction of the county, riding, or division, wherein or whereto such city, &c., is situate or adjacent, or with any two of them, for the support and maintenance, in such last-mentioned gaol or house of correction, of any prisoners committed thereto,

(*a*) Intituled "An act for amending an act of the last session of parliament, (viz. 4 *G.* 4. *c.* 64.) relating to the building, repairing, and enlarging of certain gaols and houses of correction; and for procuring information as to the state of all other gaols and houses of correction in *England* and *Wales*."

from such city, &c.; provided that no such contract be entered into by any justices of the peace of any county, &c. without an order for that purpose being made at some general or quarter sessions, or gaol sessions, having jurisdiction in that behalf, nor by the justices or other persons having the government of the prison of any such city, &c., without an order for that purpose being made at the sessions thereof; and every such contract may either be perpetual, or limited to a certain term of years, as the parties shall mutually agree; and during the existence of such contract, every prisoner who would otherwise be confined in the gaol or house of correction of the city, &c. so contracting, may be lawfully committed or removed to and confined in the gaol or house of correction so receiving him or her under such contract; and all prisoners so confined by contract, whether before or after trial, shall be subject in all matters and things to the same rules and regulations as if they were committed thereto by any of the justices of the county, &c.; and if committed before trial, shall be triable and tried in the same manner as if their offences had been committed in a part of the county, riding, or division, not within the city, &c. from whence such prisoners shall come; save only, that if the gaol or house of correction so receiving under contract a prisoner committed for trial shall be situate within two miles of the usual place of trial of the city, &c., wherein the offence charged against such prisoner shall be alleged to have been committed, it shall be lawful to try such prisoner in the manner heretofore accustomed, and for the magistrates or other proper officer of such city, &c. to direct the removal of such prisoner for trial, and to do all other acts necessary for such trial, or consequent thereon.

5 G.4. c.85. No contract entered into without an order of the quarter sessions.

Prisoners to be committed to the prison contracted for.

By § 2. The monies to be paid under any such contract as aforesaid shall be raised in the same manner as monies for defraying the expences of the gaol or house of correction for which a substitute shall be provided under such contract; and where such expences are not wholly defrayed from the same fund, and there shall arise a difference of opinion between the parties interested in the several funds applicable to the several purposes of the prison, as to the proportion in which those funds respectively shall contribute to the sum to be paid to the county, riding, or division, for the use of its prison, and such difference shall not be adjusted by agreement between themselves, it shall be lawful for either of such parties to apply to the justices of assize of the last preceding circuit, or of the next succeeding circuit, or to one of such justices, who shall by writing under their or his hands or hand nominate a barrister at law, not having any interest in the question, to arbitrate between the parties; and such arbitrator may, if he shall see fit, adjourn the hearing from time to time, and require all such further information to be afforded by either of the parties, as shall appear to him meet and necessary; and shall, by his award in writing, determine the proportions in which such parties shall contribute towards the said expences; and his award shall be final and conclusive between the parties; and such arbitrator shall also assess the costs of the arbitration, and shall direct by whom, and out of what fund, the same shall be paid.

Expence under the contract.

In case of dispute, to be settled by arbitration.

By § 3. During the existence of any such contract, if it shall extend to the whole of the prisoners who would otherwise be confined in the gaol or house of correction of the city, town, borough, port, or liberty so contracting, such city, &c. shall not be liable to

During the contract, city, &c. so contracting not

5 G.4. c.85.

liable to provide a prison.

indictment or impeachment for the non-repair of its gaol or house of correction respectively; and if such contract shall extend to only a certain class or classes of its prisoners, such city, &c. shall not be liable to provide the accommodation required to be otherwise provided for the same class or classes of prisoners by the said recited act, or by any other act now in force.

Magistrates, &c. empowered to borrow money for rebuilding gaols, &c. in case it should appear more advisable than altering old ones.

§ 4. Enacts, that if it shall seem fit to the magistrates or superintending officers of any city, &c. that instead of altering or building any gaol or house of correction for their separate use, or contracting under the provisions aforesaid, it would be more advisable to raise a sum or sums of money in aid of building a new or of enlarging a county prison, it shall be lawful for them to agree with the justices of the peace, having authority or jurisdiction in and over any gaol or house of correction of the county, riding, or division wherein or whereto such city, &c. is situate or adjacent, or with any two of them, for the payment to such justices, having such authority as aforesaid, of any sum or sums of money to be by them applied in or towards the altering, enlarging, building, rebuilding, repairing, or improving such gaol or house of correction of the county, &c. aforesaid: provided that no such agreement be entered into by any justices of the peace for any county, &c. without an order for that purpose being made at some general or quarter sessions or gaol sessions, having jurisdiction in that behalf. (See 5 *G.* 4. *c.* 12. *ante*, § XX.)

Monies are to be raised for building gaols, &c.

By § 5. It is enacted, that all monies to be paid under any such agreement as last mentioned, shall be raised in the same manner, and subject to the same conditions, as is directed in respect of monies to be raised for the building or rebuilding, repairing or enlarging any gaol or house of correction under the provisions of this act.

Money borrowed for rebuilding gaols, &c. to be repaid to such city, &c. advancing the same.

By § 6. It shall be lawful for such justices of the peace of any such county, riding, or division, entering into any such agreement as last aforesaid, to stipulate in the same (if they shall see fit so to do) that it shall be lawful for such county, &c., at such time or times as shall be in that behalf provided in such agreement, to repay to the said city, &c. the sum or sums of money which shall have been so paid or advanced in or towards the altering, enlarging, building, rebuilding, repairing, or improving such gaol or house of correction of the county, &c. aforesaid.

Magistrates to report to the secretary of state as to contracts with counties for the use of prisons.

By § 7. The chief magistrate of every city, &c. now having a gaol or house of correction, in *England* and *Wales*, shall, in *October*, 1824, report to one of H. M.'s principal secretaries of state whether any contract has been made with the county, riding, or division, for the use of its prisons, or any of them, by such city, town, borough, port, or liberty, and to what classes of prisoners such contract, if any, shall extend; and if there be no such contract, whether any steps have been taken towards such contract; and if so, in what state the treaty is, and what obstacles there are to its completion; and the chief magistrate of every such city, town, borough, port, or liberty, where no such contract shall be in existence, shall, in the same *October*, transmit to one of H. M.'s principal secretaries of state a copy of all such rules and regulations as shall be then in force for the government of every such prison, and a return in the form of the schedule to this act annexed, marked (A.), and a statement of the establishment of officers and servants employed therein, specifying the number and

Copy of regulations of prisons, and a return, to be made as in schedule annexed, to the secretary of state.

description of such officers and servants, the salaries and emoluments of each, and by whom such officers and servants are respectively appointed, and a plan of every such prison, drawn upon a scale of $\frac{1}{16}$ of an inch to a foot; and the said copies and plans shall be carefully preserved in the office of such secretary of state; and such magistrate shall, in every subsequent *October*, until such a contract shall be entered into, transmit to such secretary of state a return in the form of the said schedule, and a copy of all additions to such rules and regulations, or alterations made therein, and a statement of any increase or diminution in such establishment of officers and servants, or in their respective salaries and emoluments, together with plans, on the scale above mentioned, of any additions to the buildings of such prison, or alterations made in the construction thereof, during the preceding year. 5 G.4. c.85.

SCHEDULES to which Stat. 4 G. 4. c. 64. refers.

SCHEDULE (A.)

List of Districts, Cities, Towns, and Places in *England* and *Wales*, to which this Act shall extend, in addition to Counties at large.

Bristol.	Kingston-upon-Hull.	Norwich.
Canterbury. (a)	Leicester.	Nottingham.
Chester.	*Litchfield.* (a)	Portsmouth.
Coventry.	*Lincoln,* (a)	Worcester.
Exeter.	Liverpool.	York.
Gloucester.	Newcastle-upon-Tyne.	

SCHEDULE (C.)

Form of Mortgage and Charge upon the County Rate for securing the Money borrowed.

WE, A. B., *one of his majesty's justices of the peace, and chairman of the court of quarter sessions of the peace holden at* ——— *the* ——— *day of* ———, *for the county,* &c. *of* ——— [as the case may be], C. D., *and* E. F., *esquires, two other of his majesty's justices of the peace acting for the said county,* &c. *and assembled in the said court, in pursuance of the powers to us given by an act passed in the* ——— *year of the reign of his majesty king* George *the fourth, intituled,* &c. [insert the title of this act], *do hereby, in open court, mortgage and charge all the rates to be raised within the said county,* &c. [as the case shall be], *under the description of county rates, by the laws now in being, with the payment of the sum of* ———, *which* G. H. *of* ——— *hath proposed and agreed to lend, and hath now actually advanced and paid towards defraying the expences of building, repairing,* &c. [as the case shall be], *the gaol, bridewell, or house of correction at* ———, [as the case shall be], *for the said county,* &c.; *and we do hereby confirm the same unto the said* G. H., *his executors, administrators, and assigns, for securing the payment of the sum of* ———, *and interest for the same after the rate of* ——— per centum per annum, *and do order the treasurer for the said county,* &c. *or other person* [as the case shall be], *to pay the interest of the said sum of* ——— *half-yearly, as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said act.*

(a) By stat. 5 *G.* 4. *c.* 85. § 9. so much of stat. 4 *G.* 4. *c.* 64. as relates to the cities of *Canterbury*, *Lichfield*, and *Lincoln*, is repealed.

SCHEDULE

Form of Annual Return

1. Number of Prisoners the Prison is capable of containing in separate Sleeping Cells.	2. Number of Prisoners the Prison is capable of containing where more than One Prisoner sleeps in One Cell.	3. Total Number of Prisoners.		4. Number of Debtors.		5. Number of Misdemeanors.		6. Number of Felons.		7. Number of Prisoners committed in the Course of the Year.	8. Number of Tried Prisoners.		9. Number of Untried Prisoners.		10. Number of Prisoners above 17 Yrs. of Age.		11. Number of Prisoners under 17 Yrs. of Age.	
		Mich. 18 .	Mich. 18 .	Male.	Female.	Male.	Female.	Male.	Female.		Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.

Note.—The total of the Columns 4, 5, and 6, Column No. 3.; and the Aggregate of Columns

19.—Whether Common Gaol, House of Correction, or Bridewell?

20.—Under whose Jurisdiction and Superintendence?

21.—Number of Officers, and how appointed?

22.—Number of Classes, Wards, or Divisions, Work Rooms, Day Rooms, and Airing Yards, and whether the same can be extended or increased?

23.—Dietary or other Weekly Allowance; and Weekly Cost per Head?

24.—Allowance of Clothing and Bedding, and Cost per Head?

25.—Description of Employment, and Hard Labour?

26.—Hours of Labour and of Exercise?

27.—Amount of Earnings how applied, and in what Proportion to each class of Prisoners, to the Officers of the Prison, and to the Fund applicable to the Maintenance of the said Prison?

28.—Whether the Classification required by this Act has been observed? If not, For what Reasons; and what Measures have been taken to remedy this Defect?

29.—What Duties are performed by the Chaplain, what Provision made for Instruction, and whether Prisoners are supplied with Bibles and other Books?

30.—Attendance of the Surgeon, and whether separate Buildings or Apartments are provided for the Sick?

31.—Reasons for Non-employment of Prisoners, with reference to Column 15.

32.—Reasons for Punishments, by Solitary Confinement, by Whipping, or Irons.

33.—Is there any Insane Prisoner in Confinement?
State his or her Name, Age, and for what Offence committed?
How long has he or she been in Confinement?
How long has he or she been Insane?

34.—General Observations.

(B.)
to Secretary of State.

12.	13. Number of Prisoners who have been committed before.				14. Prisoners employed.		15.	16. Punishments for Offences within the the Prison.				17. No. of Solitary Cells and of Apartments below Ground.		18. Cases of Sickness and Death.		
Greatest Number of Prisoners at One Time.	Once.	Twice.	Three Times.	Four and more.	Hard Labour.	Employment, not being hard Labour.	Prisoners not employed.	Whippings.	In Irons.	Solitary Confinement.	Other Punishments.	Solitary Cells.	Apartments below Ground.	Cases of Sickness in the Year.	Greatest Number of Sick at one Time.	Deaths.

will be equal to the whole Number of Prisoners in the Prison, expressed in the Second Division of the
5 and 6 will be equal to that of Columns 8 and 9, and to that of Columns 10 and 11.

SCHEDULES to

SCHEDULE

FORM of Annual Return

1. Number of Prisoners the Prison is capable of containing in separate Sleeping Cells.	2. Number of Prisoners the Prison is capable of containing where more than One Prisoner sleeps in One Cell.	3. Total Number of Prisoners.		4. Number of Debtors.		5. Number of Misdemeanors.		6. Number of Felons.		7. Number of Prisoners committed in the Course of the Year.	8. Number of Tried Prisoners.		9. Number of Untried Prisoners.		10. Number of Prisoners above 17 Yrs. of Age.		11. Number of Prisoners under 17 Yrs. of Age.	
		Mich. 18 .	Mich. 18 .	Male	Female.	Male.	Female.	Male.	Female.		Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.

Note.—The Total of the Columns 4, 5, and 6, Column No. 3.; and the Aggregate of Columns

19. — Whether Common Gaol, House of Correction, or Bridewell?	
20. — Under whose Jurisdiction and Superintendence?	
21. — Number of Officers, and how appointed?	
22. — Number of Classes, Wards, or Divisions, Work Rooms, Day Rooms, and Airing Yards, and whether the same can be extended or increased?	
23. — Dietary or other Allowance; and Weekly Cost per Head?	
24. — Allowance of Clothing and Bedding, and Cost per Head?	
25. — Description of Employment and Hard Labour?	
26. — Hours of Labour and of Exercise?	
27. — Amount of Earnings, how applied, and in what Proportion to each Class of Prisoners, to the Officers of the Prison, and to the Fund applicable to the Maintenance of the said Prison?	
28. — Attendance of the Surgeon, and whether separate Buildings or Apartments are provided for the Sick?	
29. — Reasons for Non-employment of Prisoners, with Reference to Column 15.	
30. — Reasons for Punishments, by Solitary Confinement, by Whipping, or Irons.	
31. — Is there any Insane Prisoner in Confinement? State his or her Name, Age, and for what Offence committed? How long has he or she been in Confinement? How long has he or she been Insane?	
32. — General Observations.	

which Stat. 5 G. 4. c. 85. refers.

(A.)

to Secretary of State.

12.	13.				14.		15.	16.				17.		18.		
Greatest Number of Prisoners at one Time.	Number of Prisoners who have been committed before.				Prisoners employed.		Prisoners not employed.	Punishments for Offences within the Prison.				No. of Solitary Cells and of Apartments below Ground.		Cases of Sickness and Death.		
	Once.	Twice.	Three Times.	Four and more.	Hard Labour.	Employment, not being hard Labour.		Whippings.	In Irons.	Solitary Confinement.	Other Punishments.	Solitary Cells.	Apartments below Ground.	Cases of Sickness in the Year.	Greatest Number of Sick at one Time.	Deaths.

will be equal to the whole Number of Prisoners in the Prison, expressed in the Second Division of the 5 and 6 will be equal to that of Columns 8 and 9, and to that of Columns 10 and 11.

SCHEDULE (B.)

The King's Arms.

Certificate, Route, and Description of discharged Prisoners, under the 5th George IV.

CERTIFICATE.

WHEREAS by the act of parliament of the fifth George *fourth, cap. ., prisoners discharged from prison may, upon application to the visiting justices of such prison, become entitled to certain allowances from the overseers of the poor of any place through which they may pass on their way to the places of their settlement, under authority of a route and certificate of two such visiting magistrates: And whereas ——— corresponding in appearance and the account he* [or *she*] *gives of himself* [or *herself*] *to the description after mentioned, has come before us, two of the visiting justices of the county gaol* [or *house of correction*] *at ———, and is deemed by us to be a fit object to receive the regulated allowances under the said act; this is to certify the same, and to require the overseers of the poor of the places mentioned in the route, to issue to the said discharged prisoner the allowance specified in the said route, as required by the said act of parliament: Provided that the discharged prisoner produces the said route himself* [or *herself*] *and that the description corresponds with his* [or *her*] *appearance, and agrees with the account he* [or *she*] *gives of himself* [or *herself*] *and the number of children he* [or *she*] *has with him* [or *her*]. *Given under our hands and seals, this ——— day of ———.*

Seal and signature of the Magistrate.

This pass to be in force for ——— days from the date hereof.

N. B.—To prevent frauds, all parish officers are not to give the allowances granted by the aforesaid act under the authority of any other form of pass than this, which is prescribed in the schedule of the act of parliament aforesaid.

SCHEDULE (B.)—*continued.*

Route for ——— *from* ——— *in the County of* ———, *to* ——— *in the County of* ———.

A. Names of Places through which the discharged Prisoner is to travel.	B. Rate per Mile for the discharged Prisoner and Children, if any.	C. Distance of Place where Relief is advanced, to that where it is to be continued.	D. Sum paid by each Overseer.	E. Signature of each Overseer, paying the discharged Prisoner.	Remarks.
Total Amount paid - - £					

Directions for filling up these Passes.

The magistrate is to fill up the description, and to insert in the column marked A. the names of the places through which the discharged prisoner is to travel; and in the column marked B. (in words) the allowance per mile which he (or she) is to receive; and also to write the number of children in words, in the proper column in the third page; and when there are no children to strike out that part of the form. In case of any mistake, the magistrate should make the necessary alteration with a pen, and write his name opposite thereto.

The overseer of the poor will insert in the column marked C. the distance of the place to which he advances the allowance; in that marked D. the sum he gives the discharged prisoner; and in that marked E. will sign his own name, specifying the parish for which he acts. He is also to take before a magistrate any person that presents a pass in which there are alterations other than with the pen, as above directed.

Description of the discharged Prisoner.

Prisoner's Name.	His (or her) Age.	His or her Height.		Colour of his (or her)			His (or her) Dress.	Number of Children.			
		Feet.	Inches.	Hair.	Eyes.	Complexion.		Boys.	Ages.	Girls.	Ages.

SCHEDULE (B.) — *continued.*

Memorandum for the Guidance of the Overseers of the Poor, Treasurers of Counties, and Keepers of Prisons.

Each overseer is to take a receipt from the discharged prisoner, signed with his (or her) name or mark, and he is to be reimbursed the money paid by the treasurer of the county in which he serves the office of overseer, on giving him a receipt for the same, together with the discharged prisoner's receipt. The overseer who makes the last advance to carry the discharged prisoner to his place of residence, is to send the certificate, route, and pass to the keeper of the prison from which the prisoner was discharged; and the said keeper shall make and sign a declaration in the form herein next after annexed; which said declaration shall be attested by one visiting justice of the said prison.

Declaration of the Keeper of the Prison.

I ———, keeper of the county gaol [or, *keeper of the house of correction or prison*] *at ———, in the county of ———, do declare that this pass hath come to me without cover* [or, *in a cover open at the sides*], *and without any paper or thing inclosed therein, and without any writing other than the matter of such pass, and than the superscription upon the same, or upon the cover thereof.*

(*Signed*) A. B.

I ———, one of the visiting justices of the said prison, do attest, that after due examination I do believe the aforesaid declaration to be true.

Dated this ——— day of ———. C. D.

Garments, Assault with intent to spoil. See **Assault**, Vol. I. p. 226.

Gate. See **Trespasses** and **Wood.**

Gate of Iron, Iron Rail, &c. See **Larceny.**

Gauger. See **Excise.**

Gin. See **Excise.**

For the Duties on **Glass.** See **Excise.**

Gleaning.

AN idea very universally prevails among the lower classes of the community, that they have a right to glean, that is, to take from off the land the corn that remains thereon after the harvest

has been gotten in; than which notion nothing can be more erroneous. By custom, indeed, such a right may possibly, in some particular places, exist; and the laudable kindness of tenants generally induces them to permit the poor to collect the corn they have left upon the land, and to appropriate it to their own use. As a right, however, it has no more existence than a right to take the tenant's furniture from out of his messuage, and the pillage in the one case is as much felony as the plunder would be in the other: for the act is not simply a trespass, but a felony; and Mr. *Woodfall* says, he very well remembers a conviction at the *Old Bailey* on an indictment found for the exercise of this supposed right; the parties were tried before Mr. Justice *Rooke*, about six years ago. Indeed, it has been determined, after two solemn arguments, that no such right exists at common law, whatever may possibly be the case on the ground of custom in particular places. *Woodf.* 231. *Steel* v. *Houghton et Ux.* 1 *H. Blac.* 51. *R.* v. *Price*, 4 *Burr.* 1926. 2 *Russ.* 1040.

Gloves.

[34 G. 3. c. 10.—6 G. 3. c. 19.—25 G. 3. c. 55.—36 G. 3. c. 80.]

BY stat. 34 *G.* 3. *c.* 10. § 1. The duty on gloves and mittens imposed by stat. 25 *G.* 3. *c.* 55. is repealed, except the duty on licences; and by stat. 36 *G.* 3. c. 80. § 1. the said duty on licences is also repealed. **Duty on gloves, &c. repealed.**

And by stat. 6 *G.* 3. *c.* 19. § 1. For the encouragement of the importation of foreign kid and lamb skins unmanufactured, if any foreign manufactured leather gloves or mitts shall be imported, (and by stat. 25 *G.* 3. *c.* 55. the same is extended to foreign leather which is not completely made into gloves and mittens, but is cut into the form of gloves and mittens, called *shapes* or *tranks*,) the same shall be forfeited, and may be searched for and seized by any officer of the customs or excise. And every person importing the same, or aiding therein, or being a vender or retailer of any kind of leather gloves or mitts, in whose custody or possession any such foreign manufactured leather gloves or mitts, or leather cut into the form of gloves or mitts called shapes or tranks, shall be found, or who shall sell or expose the same to sale, or conceal the same with intent to prevent the forfeiture and seizure thereof, shall, over and above the forfeiture of the said goods, and all interest he may have therein, forfeit also 200*l.* with double costs. **6 G. 3. c. 19. Gloves, &c. not to be imported.**

§ 2. If the seizure shall be out of the limits of the bills of mortality, and not exceeding the value of 20*l.*, two justices, on information that such were seized, as unduly brought into, and not manufactured within this kingdom, may hear and determine the same, and proceed to condemnation or discharge as shall seem just. **Two justices may determine offences out of the bills.**

§ 3. After condemnation, the same to be publicly sold to the best advantage, by the candle, for exportation, and not to be delivered out till security be given that the same shall be exported, and not landed in any part of H. M.'s dominions. **Gloves condemned to be exported.**

6 G.3. c.19. Application of the forfeiture. § 3. Half the produce arising from the sale to go to the king, and half to the officer who shall seize and secure the same.

Proof to lie on the offender. § 4. If any doubt shall arise where the same were manufactured, the proof shall lie on the person in whose possession they shall be found, and not on the prosecutor; and if no proof be given that they were manufactured in *G. B.*, they shall, without any further proceeding, be taken to have been manufactured out of *G. B.*

§ 5. Provided, that if any person, in whose possession such goods shall be seized, (such person not importing or concealing the same,) shall discover upon oath, before one justice, the person who sold the same to him, so as the vender may be convicted, he shall be discharged from all penalties and forfeitures for having the same in his possession.

§ 6. The said forfeiture to be sued for in the courts of *Westminster;* and to be distributed, half to the king, and half to the officer who shall inform and sue.

§ 7. But if the officers of the customs or excise shall neglect or refuse, for one calendar month after condemnation, to prosecute for the pecuniary penalty, any other person may sue for the same, to be distributed as aforesaid.

§ 8. Provided that nothing herein shall extend to subject any wearer of such gloves or mitts, as part of his dress only, to any forfeiture or pecuniary penalty.

Gloves, Silk. See Silk, Vol. V.

Good Behaviour. See Surety, Vol. V.

Grand Larceny. See Larceny, Vol. III.

Greyhound. See Game, *ante.*

Gunpowder.

[16 C. 1. c. 21.—1 J. 2. c. 8.—12 G. 3. c. 61.—46 G. 3. c. 121.—54 G. 3. c. 152. c. 159.]

Who may make gunpowder. BY stat. 16 *C.* 1. *c.* 21. (passed in 1640, being the last statute of force in that king's reign,) all subjects may take and sell gunpowder, and bring into the kingdom salt-petre, brimstone, or any other material for the making of it.

1 J.2. c.8. And by a statute made in the first year of the reign of king *James* the second (which is also somewhat remarkable,) it is enacted, that if any person shall obtain a grant for the sole making or importing of gunpowder, he shall incur a præmunire.

Erecting powder mills near a town, a nuisance. It seemeth, that erecting powder mills or keeping powder magazines near a town is a nuisance by the common law; for which an indictment or information will lie. In *R.* v. *Williams*, *E.* 12 *W.* there was an indictment against *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *R.* v. *Taylor*, *T.* 15 *G.* 2.

2 *Str.* 1167., the court granted an information against the defendant as for a nuisance, on affidavits of his keeping great quantities of gunpowder near *Maldon* in *Surrey*, to the endangering of the church and houses where he lived. (Or rather it should have been expressed, to the endangering of the lives of H. M.'s subjects.)

By stat. 12 *G.* 3. *c.* 61. § 1., (which reduces into one and repeals all former acts relating to the making, keeping, and carrying of gunpowder,) No person shall use, or cause to be used, any mill or other engine for making gunpowder in any place, except in mills and other places where the manufacture of gunpowder shall be actually carrying on at the time of the commencement of this act, or where it shall afterwards become lawful to carry on such manufacture by licence for that purpose as hereinafter directed; on pain of forfeiting all gunpowder manufactured otherwise; and 2*s*. for each pound thereof.

12 G.3. c.61. In what places gunpowder may be made.

§ 2. No person shall, for the making of gunpowder, use any mill or engine worked with a pestle, commonly called a *pestle mill;* on pain of forfeiting all gunpowder manufactured therein, and 2*s*. for each pound.

No pestle mill shall be used in making.

§ 3. No person shall, in any mill or engine, make at any one time under any single pair of millstones any quantity of gunpowder, or materials to be made into gunpowder, exceeding 40lbs.; on pain of forfeiting all above 40lbs., and also 2*s*. for each pound.

What quantity shall be made at one time.

§ 5. Provided, that nothing in this act shall extend to the powder mills now erected in the parishes of *Battle*, *Crowhurst*, *Seddlecomb*, and *Brede*, in the county of *Sussex*, so far as relates to the making of such fine fowling gunpowder only, as is known by the name of *Battle powder*.

Exception of Battle powder.

§ 6. No person shall dry, or cause, &c. at any one time in any one stove or place, used for the drying of gunpowder, any quantity exceeding 40 cwt.; on pain of forfeiting all above that weight, and 2*s*. for each pound.

What quantity shall be dried at one time.

§ 7. No person shall keep in any corning-house, drying-house, dusting-house, or other place used in making gunpowder, or in any building adjoining or belonging thereto, (except magazines or storehouses constructed with stone or brick, and situate 50 yards at least from the gunpowder mill,) any greater quantity of gunpowder than shall be necessary for the immediate work then carrying on in such house or other place, on pain of forfeiting all the gunpowder above such necessary quantity, and 2*s*. for each pound.

What quantity shall be kept in or near the place of making.

§ 8. Every person and persons keeping or using any mill or other engine for making gunpowder, shall, besides the magazines or storehouses near their mills, have a good and sufficient magazine remote from their respective mills, for the purpose of receiving and safe keeping all the gunpowder made at such mills, as soon as the same can from time to time be conveniently removed thereto (which last-mentioned magazine shall be built with brick or stone near the river *Thames*, and below *Blackwall*, or in some other convenient place to be licensed by the justices as hereinafter mentioned); on pain of forfeiting 25*l*. for every month during which he shall make gunpowder without having such magazine, and 5*l*. for every day during which he (not being hindered by stress of weather, or other just impediment,) shall wilfully neglect or delay removing, with due

Magazines to be kept remote from the mill.

12 G.3. c.61. diligence, the gunpowder made at such mill from thence, or from the magazine or storehouse adjoining thereto, to the magazine so to be situate remote from the mill.

Charcoal not to be kept near the mill.

§ 10. Every such maker who shall keep or permit to be kept any charcoal within 20 yards of any mill or other engine for making gunpowder, or of any drying, corning, or dusting-house, or magazine, or storehouse thereto belonging, shall forfeit *5l.* for every week during which it shall be so kept.

With permits gunpowder may be kept.

§ 11. No person, being a dealer in gunpowder, shall keep at any one time more than 200lb. of gunpowder, and not being such, more than 50lb., in any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other building or place occupied by him (all buildings and places adjoining each other being deemed one house within the act), or on any river or other water (except in carriages loading or unloading, or passing on the land, or in ships, boats, or vessels loading or unloading, or passing on any river or other water, or detained there by the tide or bad weather,) within the cities of *London* or *Westminster*, or within three miles of either of them; or within any other city, borough, or market town, or one mile thereof; or within two miles of any palace or houses of residence of the king, or any of the king's gunpowder magazines; or half a mile of any parish church; or in any other part of *G. B.*, except in mills or other places at the commencement of this act used for the making of gunpowder, and in the places where it shall be lawful to make gunpowder, or to keep greater or unlimited quantities of gunpowder by force of this act; on pain of forfeiting all beyond the quantity hereby allowed to be kept, and the barrels in which such shall be, and also *2s.* for every pound beyond such allowed quantity.

The general exception in this section (against keeping more than certain quantities of gunpowder in places within certain limits) "or in any other part of *G. B.*," following the specified places, is to be taken as a new division of locality; and if the offence be shewn to have been committed within the limits of that general provision, the information need not go on to negative, that it was not within any of the particularly excepted places. *R.* v. *Matters*, 1 *B. & A.* 362.

§ 12. Provided, that it shall be lawful for any person to keep, for the use of any mine or colliery, any quantity not exceeding 300lbs. weight, in any magazine or warehouse, so as the same be within 200 yards of such mine or colliery, and not within any of the limits hereinbefore particularly described.

The sessions to license the erecting of mills or magazines.

§ 13. And whereas it may be necessary to have some places appointed, in which it may be lawful to erect new mills or other engines for making gunpowder, with proper magazines and offices adjoining thereto, and to have magazines for keeping unlimited quantities of gunpowder in places where there are no mills; it shall therefore be lawful for the justices in sessions, from time to time, to license the erecting or having such mills and offices, or such magazines for keeping unlimited quantities in places not being within *London* or *Westminster*, or any other limits hereinbefore particularly described, the person applying having first given 14 days' notice in writing of the intention to make such application, as also of the place or places proposed for such purposes respectively, to an overseer or churchwarden of the parish or place

wherein it is proposed to erect such new mill and offices or magazine, or of an adjoining parish if the place be extra-parochial; which overseer or churchwarden shall cause such notice to be publicly read on the *Sunday* next ensuing in the parish church after divine service. 12 G.3. c.61.

§ 14. And if the justices in the said sessions shall refuse to grant such licence, or to appoint pieces of ground for magazines remote from mills, the party aggrieved may apply to the said justices then present for a special state of the case, and the justices shall certify such case, together with the proofs offered for and against the application, in order that the said case and proceedings may be removed by *certiorari* into the court of K. B.; and the justices in their return to the *certiorari* shall state such special case. And if the court of K. B. shall be of opinion that the justices ought not to have refused such licence or appointment, they shall order the justices to grant, or to make such at their next sessions, and shall award costs on the writ of *certiorari* as they shall think fit.

§ 15. Provided nevertheless, that no person shall be liable to any penalty or prosecution under this act for keeping unlimited quantities of gunpowder without such licence of the justices, in any magazine remote from any gunpowder mill, and already built and used for that purpose, in any place not being within *London* and *Westminster*, and the other limits hereinbefore described, until the expiration of six calendar months after an adjudication by the justices that the same is dangerous; and they shall not have power to make such adjudication, except on complaint to them by some householder of the parish or place in which the magazine shall be, and after summons of the owner and examination of witnesses.

§ 16. And the justices in sessions, on application by such maker, may appoint proper and convenient pieces of ground, not being in *London* or *Westminster*, or other the limits aforesaid, and not exceeding one acre in any one place, with the use of convenient roads thereto, on which they may erect magazines, for keeping any quantity after having agreed with the owner for the purchase of the same. And if such owner shall not agree, or by reason of any impediment cannot agree, the justices shall issue a warrant to the sheriff, to impannel and return a jury to appear before them at a time and place appointed in the warrant, who shall upon their oaths enquire into the true value of the said pieces of ground, with the use of such convenient roads thereto: and the justices may send for any persons interested, and examine any parties or witnesses upon oath: and the verdict of the jury shall be kept amongst the records of the sessions: and the judgment of the said justices thereon shall be final. And the sum of money so to be adjudged, not exceeding 30 years' purchase, shall be paid to the owner of the ground; and upon such payment, or in case of refusal to accept the money, then upon leaving the same with the justices for the benefit of the owner, the inheritance of the ground, and the use of the said roads thereto, shall be vested in the purchaser, his heirs and assigns, for the purpose aforesaid, and not otherwise.

What quantities shall be carried at one time.

§ 18. No person shall carry at any one time more than 25 barrels of gunpowder in any waggon, cart, or other carriage by land; or more than 200 barrels in any barge, boat, or other vessel by

12 G.3. c.61. water (except in vessels with gunpowder imported from or to be exported to any place beyond the sea, or going coastwise); and the barrels in which it shall be carried shall be close joined and hooped, without any iron about them, and so secured that no part of the gunpowder be scattered in the passage: and each barrel shall contain no more than one hundred pounds of gunpowder: and when conveyed by land shall be entirely closed in a leathern bag, or a bag commonly called a salt-petre bag: and every carriage in which gunpowder shall be conveyed by land shall have a complete covering of wood, painted cloth, tarpaulin, or wadmill tilts over all the gunpowder therein contained: also no gunpowder shall be conveyed in any barge, boat, or other vessel by water (except in vessels for importation, or exportation, or going coastwise as aforesaid,) that hath not a close deck; and as soon as any gunpowder is put on board such vessel all such gunpowder shall be covered with raw hides or tarpaulins.—And all gunpowder carried in greater quantity or in other manner than is hereinbefore prescribed, and the barrels in which such gunpowder shall be, may be seized by any person, who shall have the same authority to remove such gunpowder and barrels, and for that purpose to use during the space of 24 hours after seizure the carriage or vessel in which such gunpowder shall be seized, and the tackling, beasts, and accoutrements belonging thereto, on paying a recompence for the use thereof, and to detain the same, as is hereinafter given to persons searching under a justice's warrant; and such seizure shall be for his own use on conviction of the offender.

In a conviction upon the 18th section of this act it must be shewn that the person to whom the gunpowder is adjudged was the person who seized. The justices have no jurisdiction to adjudge the forfeiture, unless upon a seizure; and for this purpose it should be made to appear that there was a seizure and a person seizing. Its being stated in the adjudicating part of a conviction that the gunpowder is forfeited "to the use of G. I., *the person who seized the same*," is insufficient. *R.* v. *Thomas Smith*, 5 *M.* & *S.* 133.

§ 19. And when any barge, boat, or vessel having stale, condemned, or returned gunpowder on board, arrives at the wharf, quay, or other place where the same is intended to be landed, no person shall begin to unload, or shall bring down to such wharf, quay, or other place, with intent to load in such vessel, any other gunpowder until the whole or part of such stale, condemned, or returned gunpowder be first unloaded and carried away from such wharf, quay, or other place of landing: and after such unloading and carrying away of part of such gunpowder, no person shall begin to load, or shall so bring down with intent to load, any greater quantity of other gunpowder than the part unloaded and carried away; on pain of forfeiting all such gunpowder as shall be so brought down or loaded contrary hereunto.

Combustibles not to be kept on shipboard.

§ 20. If any person having the care or management of any barge, boat, or other vessel, (except ships for importation, exportation, or going coastwise, as aforesaid,) loaded with gunpowder, or any other person on board the same, shall bring, have, or use or permit, &c. any charcoal or other combustible matter, or any fire or lighted candle, or shall smoke, or wittingly permit any person to smoke, on board the same, he shall forfeit 5*l*.

§ 21. If any person having the care of any carriage used for the conveyance of gunpowder by land, shall after beginning to load therein any quantity, or beginning to unload the same thereout, stop or stay at any place of loading, or in the loading or unloading suffer any longer time to pass than shall be reasonably necessary for that purpose; or if any person having the care of any vessel used for the conveyance of gunpowder by water (except as aforesaid), shall after beginning to load or unload any quantity of gunpowder, stop or stay at any wharf, quay, or other place of loading, or in the loading or unloading thereof suffer any longer time to pass than shall be reasonably necessary for that purpose, not exceeding 18 hours, unless hindered by the weather; or if any person shall take in or carry in such carriage or vessel any other lading of any kind; he shall forfeit 10*l*. 12 G.3. c.61. Gunpowder in carrying not to be delayed.

But by stat. 54 *G.* 3. *c.* 152. so much of stat. 12 *G.* 3. *c.* 61. § 21. as enacts, that no person shall load, take in, carry, or convey, in any waggon, cart, or other land-carriage laden with gunpowder, or in any barge, boat, or vessel laden with gunpowder on any river, (except in the case of vessels laden with gunpowder for importation from or exportation to places beyond sea or going coastwise,) any other lading of any kind whatsoever, is repealed. 54 G.3. c.152. in part repealing 12 G.3. c.61.

Stat. 12 *G.* 3. *c.* 61. § 22. Provides, that none of the aforesaid provisions concerning the conveying, loading, or unloading, 12 *G.* 3. *c.* 61. shall extend to any other carriage or vessel than such as shall carry a quantity of gunpowder exceeding 1 cwt. 12 G 3. c.61.

§ 23. And any justice, on demand made and reasonable cause assigned upon oath, may issue his warrant for searching, in the daytime, any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, ship, boat, or vessel, in which such gunpowder is suspected to be made, kept, or carried contrary to this act; and all gunpowder found on such search to be made, &c. contrary to this act, and also the barrels, shall be immediately seized by the searcher, who shall with all convenient speed remove the same to such proper place as he shall think fit; and in case of gunpowder seized in any carriage or vessel, may use for the purpose of removal, during the space of twenty-four hours after seizure, such carriage or vessel, with the tackling, beasts, and accoutrements belonging thereto, (paying afterwards to the owner a sufficient recompence for the use thereof, to be settled by the justices before whom the complaint shall be heard,) and may detain such gunpowder and barrels till it shall be adjudged on hearing before two such justices whether the same shall be forfeited. Power of the justices to search.

§ 24. No master of any vessel in the *Thames* outward bound shall receive on board more than 25 lbs. of gunpowder (except for the king's service) before the arrival of such vessel at or below *Blackwall*; and the master of every vessel coming into the *Thames* shall (except in case of the king's service) put on shore in proper places all the gunpowder on board above 25 lbs., either before the arrival of such vessel at *Blackwall*, or within twenty-four hours (if the weather will permit), and shall not afterwards have on board more than 25 lbs. (except for the king's service), on pain of forfeiting all the gunpowder found on board above 25 lbs., and the barrels containing the same, and also 2*s*. for every lb. above the quantity of 25 lbs. Regulations on the river Thames.

12 G. 3. c. 61. § 25. And the master, wardens, and assistants, of the corporation of Trinity-house of *Deptford Strond*, shall appoint searchers, who may between sun-rising and sun-setting enter any ship or vessel (except H. M.'s ships) in the *Thames* above *Blackwall*, and search for unlawful quantities of gunpowder; and shall have the same powers of seizing, removing to proper places, and retaining, all such gunpowder and barrels, as are hereinbefore given to persons searching by a justice's warrant.

Penalties how to be recovered. § 26. All penalties on this act shall be recoverable before two justices, on conviction of the offender by confession or oath of one witness, and be distributed half to the king and half to the informer; and where the penalty is pecuniary, it shall be levied by distress and sale, rendering the overplus, after deducting the penalty and expences; and for want of sufficient distress, the offender shall be committed to the house of correction, to be kept to hard labour not exceeding six months, nor less than three.

§ 27. Prosecution to be commenced within fourteen days after seizure of the gunpowder, or commission of the offence where there shall not be any seizure.

General exception. § 29. Provided that this act shall not extend to any mills or other buildings erected for making gunpowder in any lands belonging to H. M., or to the keeping of gunpowder at any of H. M.'s storehouses or magazines, or to hinder the trial of gunpowder by H. M.'s officers, or to the keeping of gunpowder at the magazines now erected at *Barking Creeksmouth* in the county of *Essex*, *Erith Level* in the county of *Kent*, or the magazines near *Liverpool*, or the city of *Bristol*, or to the carriage of gunpowder to or from the king's magazines, under a special order from the board of ordnance, or to the carriage of gunpowder with forces on their march, or with the militia during their annual exercise, or which shall be sent for the use of such forces or militia.

§ 30. Also, this act shall not extend to hinder any person from carrying an unlimited quantity of gunpowder in such close-decked vessels and in such manner as is hereinbefore directed, from any vessels lying below *Blackwall*, or from such magazines lying below *Blackwall*, and going to any place beyond sea or coastwise.

[By stat. 46 *G.* 3. *c.* 121. that part of stat. 1 *J.* 2. *c.* 8. which prohibits the importation of gunpowder is repealed.]

54 G. 3. c. 159. By stat. 54 *G.* 3. *c.* 159. § 6. The lord high admiral, or three commissioners for executing the office of lord high admiral, may order at what place or places, within or near any ports, harbours, bays, navigable rivers, &c. in this kingdom, no private ships of war, transports, &c. shall come having on board any quantity of gunpowder, exceeding 5 lbs. weight, and also appoint proper places where all gunpowder, exceeding 5 lbs. weight shall be deposited; and the master-general of H. M.'s ordnance shall appoint proper persons to take in and deliver out all such gunpowder.

Guns. See Game, *ante*.

Habeas Corpus. See Bail, Vol. I.

Hackney Coaches, Chariots, &c.

[9 Ann. c. 23.—10 Ann. c. 19.——1 G. 1. st. 2. c. 57.—4 G. 3. c. 36.—7 G. 3. c. 44.—10 G. 3. c. 44.—11 G. 3. c. 24.—11 G. 3. c. 28.—12 G. 3. c. 49.—24 G. 3. sess. 2. c. 27.—26 G. 3. c. 72.—32 G. 3. c. 62.—39 & 40 G. 3. c. 47.—42 G. 3. c. 78.—48 G. 3. c. 87.—54 G. 3. c. 147.—55 G. 3. c. 159.—57 G. 3. c. 125.]

Commissioners.

BY stat. 9 *Ann. c.* 23. § 1. the king may appoint five commissioners for regulating hackney coaches within the bills of mortality.

Licensing and duty.

Which commissioners shall, under hand and seal, license hackney coaches within the cities of *London* and *Westminster* and suburbs thereof, and other places within the bills of mortality, not exceeding 1000, [and by stat. 42 *G.* 3. *c.* 78. 100 additional]; and on every licence shall be reserved 5*s.* a week, [and by stat. 24 *G.* 3. *sess.* 2. *c.* 27. § 1. an additional duty of 5*s.* a week,] to be paid monthly.

And by stat. 9 *Ann. c.* 23. § 3. 10 *Ann. c.* 19. § 158. 12 *G.* 1. *c.* 12. § 15. they shall also license hackney chairs within the said liberties, not exceeding 400; reserving a rent of 10*s.* a year, to be paid quarterly.

Number of hackney coaches and chariots.

By stat. 54 *G.* 3. *c.* 147. § 15. the commissioners are empowered to license 1100 hackney carriages, of which 200 may be chariots and the remainder *coaches.*

Two hundred additional chariots may be licensed.

And by stat. 55 *G.* 3. *c.* 159. § 2. the said commissioners are empowered, with the consent of the lords of H. M.'s treasury, or any three of them, to license 200 hackney chariots in addition to the number allowed by 54 *G.* 3. *c.* 147. § 15.

Carriages with two wheels and drawn by one horse may be licensed.

Powers of acts relating to coaches extended to chariots &c.

And by stat. 55 *G.* 3. *c.* 159. § 4. the said commissioners are authorized, with the consent and approbation in writing of the lords of H. M.'s treasury, or any three of them, to license any number of carriages with two wheels and drawn by one horse, as shall be specified in such approbation; the said *chariots* and *carriages with two wheels* to be subject to the same licences, orders, rules, regulations, penalties, &c. as hackney coaches are liable to, either by this act or any other relating thereto.

The same licence to serve for a coach or chariot.

And by stat. 57 *G.* 3. *c.* 125. § 1. the holder of a licence may drive either a hackney coach or chariot under the same licence, provided he do not drive more than one carriage under the same licence at the same time.

Licence not to allow persons to drive more than one carriage at the same time.

But by § 2. If any holder of a licence already or to be granted by the commissioners of hackney coaches, to drive a hackney coach or chariot, shall use or drive, or cause to be used or driven for hire under such licence, more than one carriage (whether coach or chariot) at the same time, within the cities of *London* or *Westminster*, or the suburbs thereof, or any of the parishes or places comprized within the weekly bills of mortality, or any other place or places within which, by any of the laws now in force, hackney coaches and chariots are to be driven, he shall, upon conviction on the oath of one witness before the major part of the

57 G.3. c.125. commissioners, forfeit for every such offence a penalty not exceeding 10*l.*, in the discretion of the major part of the said commissioners; one half of which penalty shall go to H. M., and the other half to the informer, to be levied and recovered as any penalty may be levied and recovered under any act of parliament relating to hackney coaches; or otherwise it shall be lawful for the major part of the said commissioners to revoke the licence of the person so offending.

Mark. By stat. 9 *Ann.* c. 23. § 4. Every coach and chair shall have a distinct mark on each side; and if any shall alter such mark, he shall forfeit 5*l.*, half to the informer, and half to the king.

Inspection. By stat. 39 & 40 *G.* 3. *c.* 47. § 4. The commissioners shall appoint persons to inspect licensed hackney coaches and the horses: such inspection to take place four times at least in each year, and also as often as commissioners shall appoint, the report of the same as to their state and condition to be made to the commissioners. The commissioners may suspend the licence where the coach shall be found defective as to repair, safety, or cleanliness, or the horses unfit or insufficient, till the same be rectified.

Regulation of numbering. By stat. 55 *G.* 3. *c.* 159. § 7. It shall be lawful for the commissioners to regulate the number and mode of distinction to be adopted by each coach and chariot; and every owner who shall neglect to comply therewith shall be subject to the revocation of his licence, or shall forfeit any sum not exceeding 10*l.*, at the discretion of the commissioners; and in case of non-payment the same may be levied by distress.

Penalty of driving without licence. By stat. 9 *Ann.* c. 23. § 4. No person shall drive or let to hire any hackney coach without licence, on pain of 5*l.*; nor shall carry any person for hire in a hackney chair, without licence, on pain of 40*s.* in like manner.

Size of the horses. § 4. No horse to be used with any hackney coach shall be under 14 hands high.

Fares. By stat. 48 *G.* 3. *c.* 87. The former fares on hackney coaches are repealed; and by schedules (A.) (B.) other fares are to be taken in lieu thereof.

By § 1. Hackney coachmen may demand and take for the hire of any hackney coach the rates and fares described in either of the schedules (A.) or (B.) to this act annexed, calculating either according to time or distance as such coachman may please.

How to be calculated. By § 2. The fares shall be calculated only by the hour or mile, and not by the day.

Hackney coaches to go the distances specified in 32 G.3. c.47. and 39 & 40 G.3. c.47. within the periods specified. By § 3. Reciting that whereas the period of sunset has been liable to dispute, it is enacted, that hackney coachmen shall be compellable to go on every day of the week, after 8 in the evening between *Lady Day* and *Michaelmas Day*, and after 5 in the evening between *Michaelmas Day* and *Lady Day*, the distances and under the circumstances mentioned in stats. 32 *G.* 3. *c.* 47. and 39 & 40 *G.* 3. *c.* 47.

So much of 48 G.3. c.87. as relates to additional fares when driven By stat. 55 *G.* 3. *c.* 159. § 5. After repealing so much of stat. 48 *G.* 3. *c.* 87. as relates to additional fares when hackney coaches are driven into the country, it is enacted, "that from henceforth the several additional fares after-mentioned shall be payable and paid; that is to say, in case any hackney coach or chariot shall

be hired in any part of the cities of *London* and *Westminster*, or the suburbs thereof, the borough of *Southwark*, or any place adjoining thereto, where there is a regular continuation of carriage-way pavement, or at any standing for hackney coaches or chariots beyond any such regular continuation of carriage-way pavement, and discharged after the hour of seven in the evening, between the periods of *Michaelmas Day* and *Lady Day*, and after the hour of nine in the evening between the periods of *Lady Day* and *Michaelmas Day*, at any place where there is not a regular continuation of carriage-way pavement as aforesaid, there shall or may be demanded over and above the ordinary and established fare the full rate or fare allowed by the said recited act, to the nearest extremity of continued carriage-way pavement, or to any standing for hackney coaches or chariots beyond any such regular continuation of carriage-way pavement, where such coach or chariot shall have been hired, at the option of the person discharging such coach or chariot; and in case any hackney coach or chariot shall be hired and driven into the country, and then discharged in the day-time, and not after the hours hereinbefore respectively mentioned, there shall or may be demanded, for the return thereof to the nearest extremity of continued carriage-way pavement, or to any standing for hackney coaches or chariots beyond any such regular continuation of carriage-way pavement where such coach or chariot shall have been hired, at the option of the person discharging such coach or chariot, for each and every mile above the number of four miles, the additional rate or fare of sixpence: provided nevertheless, that no such allowance for return shall be made for any lesser distance than four miles, calculated as aforesaid." 55 G.3. c.159. into the country, repealed; and other fares substituted.

By stat. 39&40 *G*.3. *c*.47. § 2, 3. When the average price of oats computed according to stat. 31 *G*.3. *c*.30. shall exceed 25*s*. *per* quarter, the commissioners for licensing hackney coaches may allow additional fares to be taken, *viz*. 6*d*. on every 2*s*. *fare*: 1*s*. on every 4*s*. fare, and so in like manner, 6*d*. additional on every additional 2*s*., provided the coach goes or is kept to the full amount of the fare; and such additional rates may be continued till 30 days after oats are reduced to one guinea *per* quarter. **Additional fares allowed according to the price of oats.**

By stat. 7 *G*.3. *c*.44. § 12. 12 *G*.3. *c*.49. § 1. Every licensed coachman, plying for hire within the cities of *London* and *Westminster*, or the suburbs thereof, or elsewhere within the bills of mortality, shall be obliged and compellable, on every day of the week, at seasonable times, to go any where within the distance of ten miles from either of the said cities. **Limitation of distance.**

By stat. 48 *G*.3. *c*.87. § 5. Every hackney coachman, discharged in the country, and plying for and picking up promiscuous passengers, thereby converting their hackney coaches into stages, shall for every such offence incur a penalty of not exceeding 3*l*. nor less than 20*s*. **Plying for hire when returning to town.**

By § 6. No such coachman shall be compellable to carry more than four adult persons inside, and a servant outside, at one time: and shall have 1*s*. above the regular fare for every additional adult person over that number; and if he shall drive into the country, and there wait, and return with any additional adult person, whom he shall agree to carry, and shall carry, and after **Number of persons to be carried inside and out.**

waiting return with, he shall have 1*s.* for going, and 1*s.* for returning, above his regular fare.

Number of persons to be carried in coaches.

And by stat. 54 *G.* 3. *c.* 147. § 14. after reciting stat. 48 *G.* 3. *c.* 87. § 6. And that doubts have arisen as to what shall be termed an agreement to carry, and also as to the word *adult* in the said act; it is enacted, that every hackney coachman may refuse to carry more than four adult or grown-up persons, (and not being children in arms or lap) in his coach, and a servant outside, at one and the same time, and shall not at any time be compellable to carry above that number of such persons; but if he shall agree to carry, or shall actually carry above that number of such persons in his coach at one and the same time, he shall be entitled to demand, and to receive and be paid for every such additional person, of whatever age he or she may be (not being a child in arms or lap), whom he shall so agree to carry, or shall actually carry, one shilling over and above the regular fare, under the circumstances, and as allowed by the said act.

Number of persons to be carried in chariots.

And by stat. 55 *G.* 3. *c.* 159. § 3. No owner or driver of any hackney chariot shall be compellable or compelled to carry more than three persons (not being children in arms or lap) in his chariot, and a servant on the outside at the same time; but every owner or driver of any hackney chariot who shall actually carry any greater number shall be entitled to demand and to receive for every such additional person (not being a child in arms or lap) the sum of one shilling over and above his regular fare; and if he shall carry any such additional person into the country, and bring the same or any other additional person back again, shall be entitled to demand and receive, over and above his regular fare, the sum of one shilling for going into the country, and the sum of one shilling for returning.

In two-wheeled carriages.

And by § 4. No owner or driver of any two-wheeled carriage shall be compellable to carry more than two persons.

Waiting at public places.

By stat. 48 *G.* 3. *c.* 87. § 7. If drivers be directed to wait at places of public resort, he shall receive of those so directing him a reasonable sum in hand above the fare for driving thither, the sum so received to be accounted for when such coach shall be finally discharged.

Punishing hackney coachmen for leaving their coach unattended.

By stat. 55 *G.* 3. *c.* 159. § 11. In case any driver of any hackney coach or chariot shall leave his coach or chariot at any theatre or other place of public resort or entertainment unattended, whether he shall be hired or not, it shall be lawful for any inspector of hackney coaches, officer of police, constable, or other peace officer, watchman, or patrole, to drive away such coach or chariot, and deposit the same at the nearest place of deposit; and the driver of such hackney coach shall be subject and liable to a penalty not exceeding five pounds, to be levied, in case of non-payment, by distress upon the goods and chattels of the offender.

Using a hackney coach as a stage coach.

But by stat. 12 *G.* 3. *c.* 49. § 2. No person, who shall regularly use such hackney coach as a *stage coach* to and from any of the towns or places in the neighbourhood of *London* or *Westminster*, shall be obliged to carry any fare out of the ordinary course of his stage work or duty; provided that he do by painting in legible characters on the door of such coach, or on a board to be affixed

on such door, plainly denote and distinguish the same to be a stage coach to and from any such town or place.

Drivers to have check strings.

By stat. 11 *G.* 3. *c.* 28. § 2. The commissioners shall order the several persons who take out licences for hackney coaches that they provide check strings or wire to be placed in such convenient part of every such coach as to the said commissioners shall seem meet; and every hackney coachman, plying for hire without such check string or wire, shall forfeit 5*s.*, to be recovered as other penalties by any law relating to hackney coaches.

Mourning coaches.

By stat. 1 *G.* 1. *st.* 2. *c.* 57. § 3. No unlicensed person shall ply with any coach or hearse, or shall let to hire, any mourning coach within the liberties aforesaid, on pain of 5*l.* as for driving unlicensed.

By stat. 24 *G.* 3. *st.* 2. *c.* 27. § 7. If any person shall drive a mourning coach or hearse to a funeral within the cities of *London* or *Westminster*, or the suburbs thereof, or elsewhere within the bills of mortality, or within five miles of *Temple Bar*, without having a number fixed on the fore standard, shewing it to be licensed, he shall forfeit 5*l.* And on information given to the commissioners, they may summon the driver thereof, and although no express hiring shall be proved, it shall be adjudged a driving for hire.

Carts, &c. within the bills.

§ 8. No person shall drive any cart, car, dray, or other such like carriage within the limits aforesaid, or within the borough of *Southwark*, except the owner thereof shall have entered his name and place of abode with the said commissioners; and also caused his name, and the number of such carriage, to be put upon some conspicuous part thereof: And in case of neglect or refusal, every such owner or driver of such carriage, so residing and driving within the limits aforesaid, shall be liable to all the penalties and forfeitures created by any laws now in being relative to the owners or drivers of such like carriages.

But in *R.* v. *Powell,* 4 *T. R.* 572, it was determined that the owner of a cart, who does not *reside* within the bills of mortality, or within five miles of *Temple Bar,* need not enter his name and place of abode with the commissioners of hackney coaches, or have his name, or any number upon the cart, though it be driven within those limits.

Rates for chairs.

And by stat. 7 *G.* 3. *c.* 44. § 13. A chairman may take for any distance not exceeding one mile, 12*d.*; for any distance above one mile and not exceeding one mile and four furlongs, 1*s.* 6*d.*; for every further distance not exceeding four furlongs, 6*d.*; and by the hour, 18*d.* for the first hour, and 6*d.* for every half hour after.

Bye-laws.

And by stat. 9 *Ann.* *c.* 23. § 16, 17. — 1 *G.* 1. *st.* 2. *c.* 57. § 1. The commissioners may make bye-laws, to bind all persons licensed, and the renters of such licences, and the drivers. The same to be approved by the lord chancellor, commissioners of the great seal, two chief justices, and chief baron, or three of them.

Drivers refusing to go, or overcharging.

By stat. 1 *G.* 1. *st.* 2. *c.* 57. § 2. If any hackney coachman shall refuse to go at or exact more for his hire than according to the above act or bye-laws, he shall forfeit a sum not exceeding 3*l.* not under 10*s.*

Exacting more than their fare.

By stat. 48 *G.*3. *c.*87. § 11. Hackney coachmen exacting more than their fare shall be liable to the penalties, and their fares shall be recoverable as under former acts.

Coachmen compellable to go.

And by stat. 39 & 40 *G.* 3. *c.* 47. § 5. Every hackney coachman where coaches are standing shall be compellable to go with any person when desired, and on refusal (unless he prove being hired,) shall be liable to the like penalties as persons refusing to carry for hire, by any law now in being.

Misbehaviour of coachmen or chairmen.

By stat. 9 *Ann. c.* 23. § 44. If any person who shall drive a coach or carry a chair for hire, acting under a person licensed, shall be guilty of misbehaviour, by demanding more than his fare, or giving abusive language, or other rude behaviour; he shall, on conviction on oath, forfeit not exceeding 20*s.* to the poor; and if he shall not be able or shall refuse to pay, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour for seven days, and receive the public correction of the house before he be discharged.

9 Ann. c.23.
7 G.3. c.44.

And by stats. 9 *Ann. c.* 23. § 49.—7 *G.* 3. *c.* 44. § 16. On misbehaviour of a coachman or chairman by abusive language, or otherwise, the commissioners may revoke his licence, or inflict on him a penalty, not exceeding 3*l.* to the poor; and on non-payment, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour for 30 days.

55 G.3. c.159.
Commissioners or justices may summon, on complaint, owners, drivers, assistants, or watermen, before them.

By stat. 55 *G.* 3. *c.* 159. § 13. It shall be lawful for the said commissioners, or the major part of them, or any justice of the peace, upon any complaint being lodged before them against any owner or driver of any hackney coach or chariot, or against any waterman or assistant to hackney coachman, or against any chairman, to issue their summons for the appearance before them, or their warrant for the apprehension of such owner, driver, waterman or chairman, to be examined touching the said complaint, or to answer the same, as the case may be.

Punishing drivers of hackney coaches, chairmen, or watermen, for using abusive language, or obstructing police officers, &c.

§ 14. Every driver of any hackney coach or chariot, or any chairman or waterman, who shall make use of any abusive or insulting language, or other rude behaviour, or who shall obstruct any inspector of hackney coaches, officer of police, constable, or other peace officer, watchman, or patrole, in the execution of his duty, and who shall on complaint being made before any justice of the peace, or the commissioners of the hackney coaches, or the major part of them, be convicted of the same, shall be subject and liable to a penalty, at the discretion of such justice or commissioners, not in any case exceeding 10*l.*, and in default of payment to be committed to prison for a period not exceeding two months.

7 G.3. c.44.

By stat. 7 *G.* 3. *c.* 44. § 15. In every case where any person for any offence mentioned in any law relating to the licensing and regulating of hackney coaches and chairs shall be liable to be committed to prison, it shall be lawful for the commissioners, or any three or more of them, either to commit such offender to prison as by any former act and for any time not exceeding one month, or to commit such offender to *Bridewell* or other house of correction, there to be kept to hard labour for any time not exceeding one month, and also to receive the correction of the house.

By stat. 10 *G.* 3. *c.* 44. § 5. In all cases where they may commit offenders to *Bridewell* or other house of correction as aforesaid, they may commit them immediately upon such offenders being convicted before them. 10 G. 3. c. 44.

By stat. 9 *Ann. c.* 23. § 22. 23. If any person shall refuse to pay, or shall deface any coach or chair, any justice may grant his warrant to bring him before him; and on proof upon oath may award satisfaction to the party, and on refusal to pay, may bind him over to the next sessions, who may determine the same. Persons refusing to pay.

And by stat. 53 *G.* 3. *c.* 159. § 6. After reciting that whereas by the laws now in force "authority is given to justices of the peace to award satisfaction, in case of persons refusing or omitting to pay to coachmen or chairmen the money due for the hire of their coaches, or wilfully injuring such coaches or chairs, and to issue their warrants for bringing such persons before them, but no authority is given to enforce the payment of such satisfaction so awarded, and it is expedient that such authority should be given; it is enacted, that if any person shall refuse or omit to pay the driver of any hackney coach or chariot, or any chairman, the money justly due to him for the hire of the coach or chariot or chair hired, or shall wilfully deface or in any manner injure the same, it shall and may be lawful for any justice of the peace upon complaint thereof to grant a summons, or if it shall appear to him necessary, a warrant for bringing before him the offending party or parties, and upon proof made upon oath, to award reasonable satisfaction to the party so complaining for his damage and costs, and also a reasonable compensation for the loss of time on his attendance in establishing such complaint; and upon refusal to pay or make such satisfaction, to commit such person or persons to prison, there to remain for any time not exceeding one month, or until the amount of such satisfaction shall be paid and discharged." Where persons refuse to pay the driver his fare, or wilfully injure such coaches, &c. justices may grant summons or warrant.

§ 10. "No agreement or engagement whatever, at any time or on any occasion, made with the driver of any hackney coach or chariot, for the payment of more than his established fare, shall be binding on the person or persons making the same; but any such person or persons may, notwithstanding any such agreement or engagement, refuse, on discharging such coach or chariot, the payment of any sum beyond the established fare; and in case such person or persons shall actually pay to the driver of any hackney coach or chariot, whether in pursuance of any such agreement or engagement or not, any sum exceeding his established fare, which shall have been demanded or required by such driver, the person or persons paying the same shall be entitled, on complaint against such driver, to recover the overplus paid; and such driver shall be subject and liable to a penalty not exceeding 5*l.*, to be levied in case of non-payment by distress upon the goods and chattels of the offender. Agreement to pay more than established fare not binding. Penalty.

But by stat. 57 *G.* 3. *c.* 125. § 3. "It shall be lawful for any person to require any hackney coachman to drive for a stated sum of money a distance in the discretion of such hackney coachman; and in case such coachman shall exceed the distance to which such person was entitled to be driven for such stated sum of money, Coachman not to charge more than the sum agreed for, though he exceeds the distance.

the coachman shall not be entitled to demand more than the sum for which he was so engaged to drive."

Compensation to be paid to hackney coachmen improperly summoned.

By stat. 48 *G.* 3. *c.* 87. § 8. Whereas by the laws now in force, hackney coachmen are not obliged to go with persons desirous of hiring their coaches, provided they have been out 12 hours; and whereas they have been oftentimes improperly summoned for refusal; it is enacted, that every hackney coachman who shall in civil and explicit terms declare to any person desirous to engage his coach, either that he hath been at work 12 hours with his coach and horses, or that he is actually hired, and shall afterwards be summoned for refusal, and shall prove that he had been so at work, or so *bonâ fide* hired, and it shall not appear that he conducted himself improperly to the party summoning, he shall not be punished; but the commissioners for licensing hackney coaches before whom such complaint shall be heard, shall require the person summoning to compensate the coachman for loss of time in attending the office, not exceeding 5*s.* nor less than 3*s.* to be levied and recovered as any other penalty relating to hackney coaches.

Drivers not to refuse a fare although they may have been out twelve hours.

But by stat. 55 *G.* 3. *c.* 159. § 12. "No driver who shall ply for hire, shall refuse, on the pretext of having been out twelve hours, (although he may have been out that time), to go with any person or persons desirous of hiring his coach or chariot, in any direction, or to any distance prescribed by law, at the established fares."

Drivers of hackney coaches wherein any property shall be left, to carry the same to the hackney coach office within a certain time.

§ 9. Every driver in whose coach or chariot any property whatever shall be left, by any person or persons hiring the same, and who shall not carry such property within four days after the same shall have been so left, in the state in which it was found, to the hackney coach office, and deposit the same with one of the clerks of the said office, shall be liable to a penalty not exceeding 20*l.* at the discretion of the commissioners; and the clerk with whom such property is deposited, shall give a receipt for the same, and make an entry in a book to be kept at the said office, of the description thereof, and the name and address of the driver, and the day on which brought; and the property so entered shall be returned to the persons respectively, who shall prove to the satisfaction of the commissioners that the same belonged to him or her, such person previously paying all expences incurred, together with such reasonable sum to the driver as with reference to their value the commissioners shall award. Provided, that if such property shall not be proved to belong to some person within one year, the same having been advertised in such way as shall have been directed by the commissioners, such property shall be sold, and, after deducting the expences incurred from the produce, the balance shall be paid to the driver who deposited the same.

By stat. 26 *G.* 3. *c.* 72. § 3. If any hackney coachman or his renter, shall be in arrear for any rent made payable by his licence for any longer time than is expressed therein, the said commissioners may revoke such licence, and levy the money upon the goods, of either the owner or renter, in like manner and form as by any law now in being with respect to the owner.

Rents and penalties may be levied by distress.

By stat. 9 *Ann.* *c.* 23. § 12. The rents and penalties to be levied by distress, by warrant of three commissioners; which distress shall be sold in ten days, returning the overplus, charges of the distress and of the warrant being first deducted (if on seven days' notice they do not pay the fine without such warrant); and in default

of distress, to be imprisoned till paid; and if any rent shall be unpaid for 14 days, the commissioners may withdraw the licence.

And moreover by stats. 9 *Ann.* c. 23. § 17.—1 *G.* 1. *st.* 2. *c.* 57. § 7.—4 *G.* 3. *c.* 36.—7 *G.* 3. *c.* 44. § 19.—10 *G.* 3. *c.* 44. § 7. the breach of the bye-laws and of these rules and orders may be punished by any justice of the peace, mayor, bailiff, or other magistrate, where the offence shall be committed, in like manner as by the commissioners.

Commissioners to hear and determine complaints between owners and drivers of hackney coaches.

And by stat. 55 *G.* 3. *c.* 159. § 8. Upon any complaint of the owner of any hackney coach or chariot licensed by the commissioners, against his or her driver, or of a driver against his master, it shall be lawful for the said commissioners, or the major part of them, to inquire into the same, and to determine thereon, and to award such compensation to be made as to them respectively shall seem proper, and to punish any such owner or driver by inflicting any penalty not exceeding 10*l.*; and in case of non-payment, the same may be levied by distress on his, her, or their goods and chattels.

And by stat. 10 *G.* 3. *c.* 44. § 6. Every licensed person who shall neglect or refuse (being duly summoned for that purpose) to appear by himself or his renter, shall forfeit 10*s.*, to be recovered as the other penalties; and if such licensed person shall neglect or refuse to appear, together with his renter, upon the third summons, the complaint may be heard and determined in his absence.

By stat. 24 *G.* 3. *sess.* 2. *c.* 27. § 3. If any owner of a licensed hackney coach shall refuse or neglect to appear with his driver before the commissioners upon the third summons left at his usual place of abode, the said commissioners may revoke such licence, and license another person in his room.

By stat. 10 *G.* 3. *c.* 44. § 8. All penalties levied by any justice, mayor, bailiff, or other magistrate, shall by them be transmitted to the receiver-general of the duties on hackney coaches and chairs, and they shall also transmit a certificate thereof to the commissioners within ten days after levying such penalty, on pain of 10*l.*, half to the king and half to him that shall sue.

Application of penalties.

By stat. 55 *G.* 3. *c.* 159. § 15. All penalties to be recovered under this or any former act relating to hackney coaches, shall be applied, one moiety thereof to H. M., and the other moiety to the informer.

§ 16. The penalties and provisions of former acts are continued in force.

No coach to ply for hire in *New* or *Old Bond Street*.

By stat. 32 *G.* 3. *c.* 62. § 23. No person shall stand and ply for hire with any hackney coach within either *New* or *Old Bond Street*, in the parish of *St. George, Hanover Square;* and if any person shall drive, stand with, and ply for hire with any such coach in either of the said streets, he shall on conviction, on the oath of one witness, within seven days, either before the commissioners, or one justice, forfeit not exceeding 40*s.* nor less than 10*s.*, half to the informer, and half to the poor of the said parish; which if not paid, such offender shall be committed to the house of correction to hard labour, not exceeding one month, nor less than seven days, unless such penalty be sooner paid.

[Note, there are several other regulations by stat. 39 & 40 *G.* 3. *c.* 47. which are under the management of the commissioners for hackney coaches, and being local, are foreign to this work.]

Coach before a tradesman's door.

In *Slater* v. *Swann*, 2 *Str*. 872. *Raymond* C. J. said, if a hackney coach stand before a tradesman's door, and hinder customers; he may lawfully take hold of the horses, and lead them away, and is not bound to take his remedy for damages.

Numbered stage coaches; booking houses.

[§ 9 and 10 of 48 *G*.3. *c*.87. Relate to numbered stage coaches plying in the streets, and to the number of their booking houses.]

Stat. 48 G. 3. c. 87.

SCHEDULE or TABLE (A.)

For every hackney coach hired and taken any distance, there shall be paid the rates and fares following; that is to say,

			s.	d.
For every distance within - - -	and not exceeding	One mile - -	1	0
Above one mile		One mile and a half -	1	6
Above one mile and a half		Two miles - -	2	0
Above two miles		Two miles and a half -	3	0
Above two miles and a half		Three miles - -	3	6
Above three miles		Three miles and a half -	4	0
Above three miles and a half		Four miles - -	4	6
Above four miles		Four miles and a half -	5	6
Above four miles and a half		Five miles - .	6	0
Above five miles		Five miles and a half -	6	6
Above five miles and a half		Six miles - -	7	0
Above six miles		Six miles and a half -	8	0
Above six miles and a half		Seven miles - -	8	6
Above seven miles		Seven miles and a half -	9	0
Above seven miles and a half		Eight miles - -	9	6
Above eight miles		Eight miles and a half -	10	6
Above eight miles and a half		Nine miles - -	11	0
Above nine miles		Nine miles and a half .	11	6
Above nine miles and a half		Ten miles - -	12	0
Above ten miles		Ten miles and a half -	13	0
Above ten miles and a half		Eleven miles - -	13	6
Above eleven miles		Eleven miles and a half -	14	0
Above eleven miles and a half		Twelve miles - -	15	0

And so for any further distance after the like rate and proportion of sixpence for every half mile, and an additional sixpence for every two miles completed.

SCHEDULE or TABLE (B.)

For every hackney coach hired and taken for any time there shall be paid the rates and fares following; that is to say,

			s.	d.
For any time within -	and not exceeding	Thirty minutes -	1	0
Above thirty minutes		Forty five minutes -	1	6
Above forty-five minutes		One hour - -	2	0
Above one hour		One hour twenty minutes	3	0
Above one hour twenty minntes		One hour forty minutes -	4	0
Above one hour forty minutes		Two hours - -	5	0
Above two hours		Two hours twenty minutes	6	0
Above two hours twenty minutes		Two hours forty minutes	7	0
Above two hours forty minutes		Three hours - -	8	0
Above three hours		Three hours twenty minutes	9	0
Above three hours twenty minutes		Three hours forty minutes	10	0
Above three hours forty minutes		Four hours - -	11	0

And for any further time after the rate and proportion of sixpence for every fifteen minutes.

By stat 55 *G.* 3. *c.* 159. § 4. The owners and drivers of two-wheeled carriages drawn by one horse, may demand two-thirds of the amount of the fares, rates, and benefits established by law for hackney coaches and chariots. Fares for two-wheeled carriages.

Hair-Powder.

N. B. For the manner of making hair-powder, and the excise duty thereon, see title Excise (Starch), &c. and Taxes.

Harbour, filling up. See Rivers and Navigation.

Hares. See Game.

Harepipes. See Game.

Hard Labour, Power to sentence certain Offenders to be kept to. See Vol. III. tit. Judgment.

Hats.

[24 G. 3. sess. 2. c. 21. — c. 51. — 36 G 3. c. 125. — 51 G. 3. c. 70. — 59 G. 3. c. 52.]

DUTIES on licences to retail hats, and on hats imported, are repealed by stat. 51 *G.* 3. *c.* 70.

By stat. 59 *G.* 3. *c.* 52. table (A.) for hats made of or mixed with felt, hair, wool, or beaver imported, a duty of 10*s.* 6*d.* is payable. Importation.

By stat. 24 *G.* 3. *sess.* 2. *c.* 51. § 24. Any licenced person may *export* any number of hats, not less in quantity than [one dozen in one package, either lined or unlined, and if lined, then without being stamped, 36 *G.* 3. *c.* 125. § 18.] upon giving notice to the nearest distributor of the stamps, who shall grant a certificate thereof.

And for the encouragement of the hat manufactory, it is enacted by stat. 24 *G.* 3. *sess.* 2. *c.* 21. § 1, 2. that no hare-skins, hare-wool, coney-wool, or undressed coney-skins, shall be exported, or loaden upon any horse, cart, or other carriage, or laid on board any ship or boat in order to be exported, on the penalty of 500*l.*, and the same to be forfeited, and every person aiding or assisting therein shall forfeit 40*l.* Hare and coney skins not to be exported,

§ 3. If any person shall dye any such skins, or shall be aiding and assisting therein, he shall forfeit 20*l.*; and such skins shall be seized, together with the machines and other utensils and apparatus used therein, and the same shall be forfeited. nor dyed.

§ 6. And for the further encouragement of the hat manufactory, all goats' hair or *Turkey* goats' wool may be imported duty free. Goats' wool.

§ 4, 5. All penalties by this act imposed shall be one moiety to H.M., the other to the officer of the customs suing; and are to be recovered in the same manner as directed by the acts for preventing frauds in the revenues of the customs; and all actions, &c. shall be within the county where the offence was committed.

Hawkers and Pedlars.

[7 G. 3. c. 43.—48 G. 3. c. 84. § 7.—50 G. 3. c. 41.—52 G. 3. c. 108.]

Sect. I. *Licences, Duties, &c.*
[50 G. 3. c. 41.]

II. *Certificate to enable Persons to obtain Licences.*
[50 G. 3. c. 41.]

III. *Exceptions—Selling in Markets or Fairs.*
[7 G. 3. c. 43. — 48 G. 3. c. 84. — 50 G. 3. c. 41. — 52 G. 3. c. 108.]

IV. *Hawkers duly licenced may set up any Trade.*
[50 G. 3. c. 41.]

V. *Selling by Auction.*
[50 G. 3. c. 41.]

VI. *Packages to be marked.*
[50 G. 3. c. 41.]

VII. *Dealing in Smuggled Goods.*
[50 G. 3. c. 41.]

VIII. *Trading contrary to or without a Licence, or refusing to produce it.*
[50 G. 3. c. 41.]

IX. *Hiring or lending Licences.*
[50 G. 3. c. 41.]

X. *Penalty on forging Licences.*
[50 G. 3. c. 41.]

XI. *Duties of Constables.*
[50 G. 3. c. 41.]

XII. *Recovery of Penalties.*
[50 G. 3. c. 41.]

XIII. *Of Appeal.*
[50 G. 3. c. 41.]

XIV. *Conviction.—General Issue.*
[50 G. 3. c. 41.]

§ I. Licences — Duties, &c.

[50 G. 3. c. 41. § 1, 2, 3, 4. 6. 8, 9, 10, 11. 31. 33.]

A Hawker is defined by Dr. Johnson to be "one who sells his wares by proclaiming them in the street."

A pedlar (*a*) (petty dealer) "one who travels the country with small commodities."

Various statutes have been passed for licensing and regulating them, viz. 9 & 10 *W.* 3. *c.* 27. — 3 & 4 *Ann. c.* 4. — 9 *G.* 2. *c.* 35. — 7 *G.* 3. *c.* 43. — 29 *G.* 3. *c.* 26. — 50 *G.* 3. *c.* 41., and 52 *G.* 3. *c.* 108.

But by stat. 50 *G.* 3. *c.* 41., intituled "An act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches," § 1., after reciting that whereas it is expedient that the powers and provisions contained in any acts of parliament relating to the duties upon hawkers and pedlars should be brought together into one act, and that the said duties should be placed under the management of the commissioners of hackney coaches; it is enacted, that from and after the first day of *August*, 1810, an act passed in a parliament holden in the ninth and tenth year of his late majesty king *William*, intituled, *An act for licensing hawkers and pedlars, for a further provision for the payment of the interest of the transport debt for the reducing of* Ireland: and all acts made for continuing, altering, or regulating the duties thereby imposed, as far only as the said acts relate to such continuance, alteration, or regulation, and all powers, provisions, and clauses contained in any act or acts of parliament relating to the collection of the same duties, shall be repealed, except such of the said powers, provisions, and clauses as may be necessary to be kept in force for the recovery of any arrears of the said duties hereby repealed, or any penalties incurred under any of the acts hereby repealed: provided always, that nothing herein contained shall be construed to revive any act or provision which had been repealed by any of the acts or provisions repealed by this act, and which were not in force at the time of passing this act; but the same shall continue repealed, notwithstanding any thing contained in this act.

50 G. 3. c. 41.

From Aug. 1, 1810. 9 & 10 W. 3. c. 27. and all acts relating to the duties thereby imposed, &c. repealed.

§ 31. All the powers, rules, penalties, and forfeitures, exemptions, and things whatsoever, which, by stat. 9 & 10 *W.* 3. *c.* 27., or by any other law now in force relating to the duties by that act granted, are provided, settled, or established (other than so far as the same is or are inconsistent with or repugnant to this act, and other than in such cases for which different provisions are prescribed by this act), shall be exercised, and put in execution for the managing, raising, levying, recovering, and paying the several duties hereby granted, as fully as if all the said powers, &c. were repeated in this present act.

Powers of recited act of 9 & 10 W. 3. where applicable, extended to this act.

§ 2. All licences granted under any former act shall continue in force until the 1st day *September* 1810; and all future licences which shall be granted under this act shall continue in force until the 1st day of *August* next following the dates of such licences.

Former licences to be in force till Sept. 1, 1810, and all future licences to continue in force till Aug. 1.

§ 3. and § 8. transfer the licensing from the former commissioners to the commissioners appointed for the time being for licensing and regulating hackney coaches.

Duties to be under commissioners for licensing hackney coaches.

(*a*) The orthography of this word in our statutes and law books is as here written, but in Johnson and our best dictionaries it is spelt pedler. *Ed.*

50 G. 3. c. 41. § 11. Persons already authorised out of *London* to grant licences are to continue to do so till their authority is annulled.

Allowances to commissioners. § 4. The treasury may make allowances to the commissioners of hackney coaches, and their officers, for their services under this act.

Licences to be annual. § 9. The licences shall be annual, and continue in force for such time as in § 2. provided.

§ 10. The duties shall be paid at the time of receiving the licences.

Duties to be paid to cashier, &c. And by § 33. the several duties hereinbefore granted shall be paid from time to time into the hands of the cashier for the time being, of the duties on hawkers, pedlars, and petty chapmen, and paid into the exchequer, and made part of the consolidated fund.

Duty for licenses. § 6. After the 1st day of *August* 1810, there shall be raised and paid the rates and duties following; *i. e.* by every hawker, pedlar, petty chapman, and *every other trading person and persons going*

(*a*) *Rex* v. *Little*, *T.* 31 *G.* 2. 1 *Burr.* 609. *Paley*, 68. A conviction on stat. 9 & 10. *W.* 3. c. 27. (which requires a duty to be paid, and a licence taken out by every hawker, pedlar, petty chapman, or any other trading person, "*going from town to town, or to other men's houses, and travelling either on foot or with horse, carrying to sell or exposing to sale any goods*," &c.) set forth "that one *T. P.* came before the justice, and gave him information that *T. Little*, the defendant, (at a place and time specified) was found offering to sale silk handkerchiefs, and trading as a hawker, pedlar, or petty chapman; and that the said *T. Little* did then and there offer to sell a parcel of silk handkerchiefs; and that the said *T. Little* did not, although required so to do, produce any licence, as the law in that case made and provided directs to qualify him for his said trading." It afterwards stated, that the defendant, upon his appearance, was asked if he had any thing to say why he should not be convicted of the said offence so charged upon him in form aforesaid; whereupon he *confessed* that he did offer to sale silk handkerchiefs to the said *T. P.* in such manner as is mentioned in the aforesaid information, and that he hath no licence for selling thereof. It then proceeded, "and the said *T. Little* is now here required to produce a licence granted to him to empower or qualify him to travel or trade pursuant to the statute; and he doth not produce any such licence, or any licence in that behalf, and doth not allege any matter in his defence." Whereupon it was stated, "that it manifestly appears to the justice that the defendant is guilty of the offence in the information above laid to his charge in manner and form as by the same is above alleged." He was accordingly "convicted of the said *premises* in the said information specified, according to the form of the statute in such case made and provided." The objection on behalf of the defendant was, that the charge did not bring him within the description of the act, as going from town to town, &c. and travelling, &c., but only described him generally to be a person that traded *as* a hawker and pedlar, and offered to sell a parcel of silk handkerchiefs to the informer. The conviction was quashed, and Lord Mansfield C.J. said, "A single act of selling a parcel of silk handkerchiefs to a particular person is not a proof that he was *such* a hawker, pedlar, or petty chapman, as ought to take out a licence by the act. Now it is certainly of the essence of the crime of not producing a licence, that he be such a person as ought to take out a licence. It may not be necessary to define exactly what a hawker, pedlar, or petty chapman is, but it is necessary to allege and shew, that he sold the goods, and *traded* as one. The defect, it was also agreed, was not helped by the confession, which went only to the offence charged. — From a note to the conviction in this case in *Paley*, 70, (*a*) it appears, that the Court declared *the going about from place to place* to be of the essence of the offence, in order to make the defendant a person who ought to take out a licence; and the being described as a hawker and pedlar, without any allegation of the fact of his going from town to town, was a conclusion unsupported by the premises. — The objection, therefore, (observes Mr. Paley,) is not, as has been sometimes supposed, that *one act* of trading is *not* sufficient to constitute the offence specified; for, it is conceived, that several acts stated in the same way as this would not have amounted to the offence; but it is,

from town to town, or to other men's houses (*a*) and travelling either on foot, or with horse, horses, or otherwise, in *England* and *Wales*, or the town of *Berwick-upon-Tweed*, carrying to sale, or exposing to sale any goods, wares, or merchandize, a duty of 4*l.* for each year. 50 G. 3. c. 41.

And every person so travelling with a horse, ass, or mule, or other beast, (*a*) bearing or drawing burthen, the sum of 4*l.* yearly, for each beast he or she shall so travel with, over and above the said first-mentioned duty of 4*l.*

§ II. Certificate to enable Persons to obtain Licences.

[50 G. 3. c. 41. § 12. 13.]

By stat. 50 *G.* 3. *c.* 41. § 12. Before any person shall receive any licence to trade or travel as aforesaid, every such person shall produce to the commissioners for licensing and regulating hackney coaches, or their deputy appointed for licensing hawkers, pedlars, petty chapmen, and other trading persons as aforesaid, a certificate signed by some one clergyman officiating within the parish, chapelry, or place wherein such person so applying for such licence has his usual residence, and also by two reputable inhabitants of the said parish, chapelry, or place, attesting that the person so applying is of good character and reputation, and is a fit person to be licensed to exercise the trade of a hawker, pedlar, and petty chapman.

50 G. 3. c. 41. Hawkers, before they are licensed, to produce certificate of their good character.

§ 13. The certificate so to be produced shall be in the form or to the effect following:

WE, A. B. *the minister, and* C. D. *and* E. F. *being two householders, residing at* ———, *in the parish, chapelry, or otherwise,* [as the case may be], *of* ———, *in the county of* ———, *do hereby certify, That* G. H. *hath been known to us for the space of* ——— *years last past, and during all that time hath usally resided in the said parish, chapelry, or otherwise* [as the case may be], *of* ———, *and is a person of good character and reputation, and is a fit person to be licensed to exercise the trade of a hawker, pedlar, and petty chapman. Dated the* ——— *day of* ———

A. B. *Minister.*
C. D. }
E. F. } *Householders.*

§ III. Exceptions.—Selling in Markets or Fairs.

[7 G. 3. c. 43. § 7, 8, 9.—48 G. 3. c. 84. § 7.—50 G. 3. c. 41. § 5. 23. —52 G. 3. c. 108. § 1, 2.]

Stat. 50 *G.* 3. *c.* 41. § 5. Nothing herein contained shall extend or be construed to extend to hinder any person or persons from selling or exposing to sale any sorts of goods or merchandize in any public mart, market (*b*) or fair, legally established within the king-

50 G. 3. c. 41. Goods may be exposed to sale in public markets.

that no overt act is laid of trading as a hawker and pedlar according to the intention and description of the act. See *Rex* v. *Buckle*, 4 *East*, 346. 1 *Smith's Rep.* 49.

(*a*) See *R.* v *Robotham*, 3 *Brr.* 1472.

(*b*) This appears to extend only to sales in the public market-places, and on the days of markets. *Rex* v. *Redfearne*, 4 *T. R.* 273.

50 G. 3. c. 41.

dom of *England*, dominion of *Wales*, and town of *Berwick-upon-Tweed*; but such person or persons may do therein as they lawfully might have done before the making of this act; any thing herein contained to the contrary notwithstanding.

Act not to affect persons selling certain articles, nor tinkers, &c.

§ 23. Nothing in this act shall extend to prohibit any person or persons from selling any printed papers licensed by authority, or any fish, fruit, or victuals, nor to hinder the real worker or workers, or maker or makers of any goods, wares, or manufactures of *G. B.*, or his, her, or their children, apprentices, or known agents or servants, usually residing with such real workers or makers only, from carrying abroad or exposing to sale, and selling by retail or otherwise any of the said goods, wares, or manufactures of his, her, or their own making, in any mart, market, or fair, and in every city, borough, town corporate, and market town; nor any tinkers, coopers, glaziers, plumbers, harness-menders, or other persons usually trading in mending kettles, tubs, household goods, or harness whatsoever, from going about and carrying with him or them proper materials for mending the same.

A person buying books in sheets and making them up, and then going from *London* into the country and selling them, is within the hawkers' and pedlar's act, and is not exempted from penalties as the maker of the goods.

Moore q. t. *v. Edwards*, *M.* G. 3. 2 *Chitt. Rep.* 213. *Clarke* moved to set aside a verdict obtained for the plaintiff in an action for penalties on the hawkers and pedlars' act. The defendant bought books in sheets, and made them up, and carried them from *London* into the country, and sold them at places where he did not reside; and it was contended that he was a maker of the goods within the exception in the hawkers and pedlars' act. — *Abbott* C. J. This case comes within the act of parliament. A person going from *London* into the country is within the term 'travelling,' and the defendant is not within the exception, as a maker of the commodity. — *Bayley* and *Holroyd* Js. concurred. *Per cur. R. R.*

52 G. 3. c. 108. No wholesale trader deemed hawker, nor shall he or his servants be liable to penalties for going from house to house selling goods by wholesale only.

By stat. 52 *G.* 3. *c.* 108. § 1. No person being a wholesale trader in *lace*, in *woollen*, *linen*, *silk*, *cotton*, or *mixed goods*, or any of the goods, wares, or manufactures of *G. B.*, and selling the same by wholesale, shall be deemed or taken to be a hawker, pedlar, or petty chapman within the intent and meaning of stat. 50 *G.* 3. *c.* 41., or any other act relative to hawkers, pedlars, or petty chapmen, or of any or either of them; and all and every such person and persons, his, her, or their apprentices, servants, or agents selling by wholesale only, shall go from house to house, and from shop to shop, to any of their customers, who shall sell again, by wholesale or retail, without being subject or liable to any of the penalties or forfeitures contained in the said stat. 50 *G.* 3. *c.* 41., or in any of the said acts touching hawkers, pedlars, and petty chapmen.

Nor shall persons be prohibited from carrying about coals in carts, &c.

§ 2. Nothing in the said stat. 50 *G.* 3. *c.* 41. shall extend to prohibit any person from carrying about coals in carts, or on horses, mules, and asses, and selling the same by retail, or subject any such person to any duty, penalty, or forfeiture imposed by the said stat. 50 *G.* 3. *c.* 41.

Exposing to Sale any Goods, Wares, or Merchandize.

48 G. 3. c. 84.

But by stat. 48 *G.* 3. *c.* 84. § 7. If any hawker, pedlar, petty chapman, or other trading person going from town to town, or to other men's houses, and trading on foot, or with horses or other cattle, or otherwise, shall offer for sale, tea, brandy, rum, geneva,

or other foreign spirits, tobacco, or snuff, although he may have a permit for the same, it shall be lawful for the person to whom the same shall be offered, to stop, arrest, and detain the person so offering, and to seize such goods, and to carry them to the next warehouse for the customs or excise, and to carry the person before a justice of peace, who may require him to enter into recognizance, as directed in stat. 45 *G*.3. *c*.121.; and he shall be subject to the provisions in the said act; (See *Excise, ante*, p. 313.) and if the offender be a subject of H. M., and a seaman, and capable of serving in the navy, may send him to some officer of the impress service, to be dealt with according to stat. 47 *G*. 3. *sess*. 2. *c*.66., or be by such justice committed to prison, and prosecuted for the penalties incurred for such offence. 48 G.3. c.84. Spirituous liquors, tea, tobacco, &c.

And by stat. 7 *G*.3. *c*.43. § 7, 8, 9. If any *foreign cambric*, or *French lawn*, shall be found in the possession of any hawker, pedlar, or petty chapman, he shall forfeit the same, and also all the other goods in the pack where the same shall be found, and shall also be adjudged to have forfeited his licence; half the said goods to be disposed to the use of the king, and half to the officer who shall sue for the same; and if no officer shall sue within one month, then any other person may sue. 7 G.3. c.43. Foreign goods.

§ IV. Hawkers duly licensed may set up any Trade.

[50 G. 3. c. 41. § 22.]

By stat. 50 *G*. 3. *c*.41. § 22. It shall be lawful for any person or persons, who on the first day of *May*, 1810, was or were duly licensed to trade as hawkers and pedlars, to set up, occupy, use, or exercise any craft, mystery, or occupation, used or occupied within this realm, in any place where they shall be resident inhabitants, although they shall not have been brought up in such craft, mystery, or occupation, seven years, as apprentices (*a*); and also to set any person to work in such craft, mystery, or occupation, although such person shall not have been apprentice therein as aforesaid; any penalty, matter, or thing contained in stat. 5 *Eliz*. c. 4. to the contrary notwithstanding; and if any such person, or their wives or children, shall be prosecuted for using or exercising any such craft, mystery, or occupation in any city, town, or place, and shall make it appear that they had such licence as aforesaid, they shall, upon the general issue pleaded, be found not guilty in any action, bill, plaint, information, or indictment for such cause exhibited against him; and in all cases where costs are allowed, such person so acquitted shall be entitled to and shall receive double costs; and no such persons, their wives, or children, during the time they shall use and exercise such craft, mystery, or occupation, in any parish or place, shall be removable therefrom to his, her, or their last legal place of settlement, until such person or persons shall become actually chargeable to such parish or place, any law not † in being, relative to the settlement of the poor, to the contrary thereof notwithstanding. (See stat. 35 *G*. 3. *c*. 101., by which no person can be removed until "*actually chargeable*.") 50 G.3. c.41. Hawkers who on May 1, 1810, were duly licensed may set up any trade in the place of their residence. † *Sic*.

(*a*) See stat. 54 *G*. 3. *c*. 96. Vol. 1. tit. Apprentices.

§ V. Selling by Auction.

[50 G. 3. c. 41. § 7.]

50 G. 3. c. 41. Hawkers (not being residents) not to sell by auction, on penalty of 50*l*.

By stat. 50 *G.* 3. *c.* 41. § 7. After the 1st of *August*, 1810, it shall not be lawful for any hawker, pedlar, petty chapman, or any other trading person or persons going from town to town, or to other men's houses, and travelling either on foot, or with horse or horses, either by opening a room or shop, and exposing to sale any goods, wares, or merchandize by retail, in any town, parish, or place, such person not being a householder there, or the same not being an usual place of his or her abode, or by any other means or device, to vend or sell, either by himself or herself, or by any auctioneer whether licensed or not, broker, appraiser, agent, servant, or other person, on his or her behalf, any goods, wares, or merchandize, whatsoever, by outcry, knocking down of hammer, candle, lot, parcel, or any other mode of sale at auction, or whereby the best or highest bidder is or shall be deemed to be the purchaser; and every person and persons so vending or selling contrary to such prohibition as last aforesaid, shall forfeit and pay for every offence the sum of 50*l*., to be recovered and applied as hereinafter mentioned. (See § 24. *post*, § XII.)

A licensed hawker may sell by retail in a hired room, where he is not a householder, provided such selling be not by outcry, &c. or some mode of sale at auction.

Allen v. *Sparkhall*, *M.* 58 *G.* 3. 1 *B.* & *A.* 100. This was an action to recover the penalty under stat. 50 *G.* 3. *c.* 41. § 7. At the trial before *Gibbs* C. J. at *Norfolk* Sum. Ass. 1816, it was admitted that the defendant, a hawker and pedlar duly licensed, on the 18th *July*, 1816, opened a certain room in the town of *Holt*, and sold therein by himself, by retail, one cotton pocket handkerchief, and one other handkerchief, he the defendant not then being a householder in that town, nor such town then being his usual place of abode, but that the defendant did not sell the said goods by outcry, knocking down by hammer, candle, lot, parcel, or any mode of sale at auction, or whereby the best or highest bidder should be the purchaser. Upon these facts the plaintiff was nonsuited, with leave to move to enter a verdict for one penalty, if the court of K. B. should think the sale within the act. —On the motion being made, Ld. *Ellenborough* C. J. said, On looking at the clause, I think that the words "by outcry, &c. or any other mode of sale at auction," govern the meaning of the whole. If the clause had stopped at the words "any other means or device," an argument might have been raised, but the general scope is laboriously confined to outcry and sale at auction. — *Bayley* J. There is not any general prohibition to prevent those persons from selling, but only by those means specified in the statute. Now this defendant did not adopt any of the prohibited means. — *Abbott* J. The clause is prohibitory, but the prohibition is confined to persons of a certain description. A hawker is one description of person, a person who sells by retail is another, and neither must sell by auction. — *Holroyd* J. concurred. Rule refused.

A licensed auctioneer going from town to town in a public stage-coach, and sending

R. v. *Turner*, *E.* 2 *G.* 4. 4 *B.* & *A.* 510. Conviction of defendant under stat. 50 *G.* 3. *c.* 41. The offence charged in the information was, that the defendant heretofore, to wit, on, &c., at, &c., was a *pedlar and trading* person, going from town to town, travelling with horses, exposing to sale goods; and

that he did, on the day and in the year last aforesaid, as a pedlar and trading person, go from town to town, travelling with horses at, &c., and did then and there, as a pedlar and trading person, going from town to town, and travelling with horses, expose to sale goods, to wit, china, &c. The defendant having appealed against the conviction, the sessions confirmed it, subject to the opinion of the court of K. B. on the following case: The defendant had no hawker's licence, but was a licensed auctioneer, having only two usual places of abode, the one at *Bath*, and the other at *Cheltenham*. At *Cheltenham* he was the agent for the real workers or makers of the goods, for the purpose of selling such goods, as well by private contract as by public auction. The real workers or makers of the several goods mentioned were not in partnership, but were distinct employers of the defendant for the sale of their several property. In the beginning of the month of *March*, 1820, certain goods, consisting of cabinet ware, &c., were sent by the several real workers, or makers of them, to the defendant at *Cheltenham*, with a request from them, that he would cause the same to be conveyed by public carriers' waggons from *Cheltenham* to the city of *Worcester*, and would himself proceed thither in order to sell the same there by public auction; and in case the whole of such goods should not be there sold, that he would cause the same to be conveyed by public carriers' waggons from *Worcester* to *Gloucester*, and would himself proceed to *Gloucester*, in order to sell the same there by public auction. The defendant, in compliance with this request, caused the goods to be conveyed by public carriers' waggons from *Cheltenham* to *Worcester*, and proceeded himself to *Worcester* some part of the way in a common stage-coach, drawn by four horses, and the other part of the way in a post chaise, and when at *Worcester* exposed the goods for sale by public auction and sold many of them by public auction to different persons. Shortly after the sale at *Worcester*, the defendant caused such part of the goods as were not sold at *Worcester* to be similarly conveyed to *Gloucester*, and proceeded thither himself by a stage-coach; and when at *Gloucester* exposed such goods for sale by public auction, and sold many of them by public auction, to different persons. The whole of the goods belonged to the real workers or makers of them, the defendant not having any property therein; and the whole expenses of removing the goods from place to place were allowed to him in his account with the real workers or makers. The defendant paid regularly the auction duty upon such sales, which, together with the usual commissions, was allowed to him in his account with the real workers or makers of the goods. At the time of the sales, neither the real workers or makers of the goods or of any part thereof, or their children, apprentices, or known agents or servants usually residing with them, were present in *Worcester* or *Gloucester*, nor were *Worcester* or *Gloucester*, or either of them, an usual place or places of abode of any of the real workers or makers of the goods. The defendant was not the known agent or servant usually residing with the real workers or makers of such goods, or with any of them, nor was he a householder either at *Worcester* or *Gloucester*. — After argument, *Abbott* C. J., said, The question intended to be submitted to us by the sessions is, whether a licensed auctioneer, conveying goods by a public stage waggon from place to place, and

R. v. Turner.

goods by public waggons, and selling the same on commission, by retail or by auction, at the different towns, is a trading person within the meaning of stat. 50 G. 3. c. 41. § 6. and must take out a hawker's and pedlar's licence.

selling them on commission, is to be considered as a pedlar or trading person within the meaning of the 50 *G.* 3. *c.* 41. By § 6. it is enacted, "That there shall be paid an annual duty of 4*l.* by every hawker, pedlar, petty chapman, and every other trading person going from town to town, or to other men's houses, and travelling either on foot or with horses, or otherwise carrying to sell or exposing to sale any goods, &c.;" and a further duty of 4*l.* in respect of every horse or other beast bearing or drawing burden. Now, it appears to me that the appellant is a trading person within the meaning of this section. It has been urged that he is not a trader, but an agent selling the goods of others on commission. It is clear, however, that agents were meant to be included within the act of parliament, for § 23. contains an express exception of the particular agents therein mentioned. Now, that exception would be wholly unnecessary, if other agents were not meant to be included within the act. The defendant in this case is convicted for having no licence at all, and therefore I think the mode of travelling wholly immaterial. It has been said that the conviction cannot be supported in its present form, inasmuch as the ground of it is, that the defendant travelled with horses. If it had been found as a fact in the case that the defendant had been convicted for want of a horse licence, I should have thought that the conviction could not be supported; for the horses, in respect of which he is bound to take out a licence, are those bearing or drawing burden, or, in other words, carrying and drawing his goods. The defendant here was convicted for having no licence at all, and I think, therefore, the word "horses" may be rejected. And, besides, in the way in which the present question is brought before us, we cannot look at the form of the conviction, but merely at the case submitted to us by the sessions. The order of sessions must, therefore, be affirmed.—*Holroyd* J. I doubted at first whether the words of the 17th section, "trade as aforesaid," would be satisfied without an actual sale of goods. I think, however, that those words refer to the 6th section, and that they are sufficiently satisfied by a mere exposure to sale. The ground of this conviction is, that the appellant had no licence at all, and therefore the mode of travelling is immaterial and need not be proved.—*Best* J. I think the defendant clearly within the act from the exceptions in the 9th and 23d sections, which otherwise would have been quite unnecessary. It is said that if we affirm this conviction, it will be impossible for an auctioneer to carry on his business, but that is not so. The business of an auctioneer is to sell property in the town in which he resides, or to go to other persons' houses and sell property for them at their houses. It is no part of the business of an auctioneer to travel from town to town, and sell goods there in the manner in which the defendant has acted. Order of sessions confirmed.

A person travelling from town to town and having packages of books, &c. sent after him by public conveyance, and taking rooms at each

Dean, q. t. v. *King*, *E.* 2 *G.* 4. 4 *B.* & *A.* 517. Declaration against the defendant for penalties, under the hawkers' and pedlars' act. The first count charged that the defendant at *Axminster*, in the county of *Devon*, being a trading person going from town to town, and travelling with a horse, and not being a householder there, and that not being a usual place of his abode, did by himself sell by auction divers printed books, &c. contrary to the form of the statute; whereby he incurred a penalty of 50*l.* The

second count charged that the defendant travelled on foot. The third and fourth counts charged him as a hawker and pedlar. There were other counts, charging offences committed at *Honiton.* At the trial before *Holroyd* J. at the last assizes for the county of *Devon,* the following facts appeared in evidence: in *February,* 1820, the defendant had been at *Chard,* but there was no evidence that he had sold any books there by public auction; he went from *Chard* to *Axminster* in a borrowed gig, but it did not appear that any books were sent or conveyed by him from *Chard* to *Axminster.* He took two rooms at *Axminster,* and sold books by retail and by auction there: he went from thence to *Honiton.* It did not appear in what mode he travelled: nine chests, containing books, &c. weighing 1325lbs. were sent from his rooms at *Axminster* by a common stage waggon, directed to him at *Honiton,* and there he sold books both by retail and by auction. It was proved that he was not a householder at *Honiton* or *Axminster.* Upon these facts, the learned judge thought that he was a trading person, going from town to town, within the meaning of stat. 50 *G.* 3. *c.*41.; and he directed the jury to find a verdict for the plaintiff, with liberty to the defendant to move to enter a nonsuit. *Casberd* now moved accordingly, and argued that the defendant is not a person within the contemplation of this act of parliament, which applied only to hawkers and pedlars, and persons *ejusdem generis.* Now a hawker is a person who carries with him, either in a package or a cart, the goods which he intends for sale. In this case the goods were sent by a common stage waggon. The term "other trading person," in the act of parliament, applies to persons of the same description as a hawker and pedlar who deals in a small way. Here the large quantity of goods which the defendant sent from *Axminster* to *Honiton* shews that he is not a dealer of that description; and, therefore, not a person within the contemplation of the act, which meant only to apply to petty dealers carrying their commodities with them. In *Dean q. t.* v. *Hereford,* tried at *Exeter* spring assizes, 1820, *Wood* B. was of opinion, that a person who sent large quantities of goods by a ship to *Plymouth* dock, and conveyed them in a cart to *Plymouth* town, where he took a house, and sold them by auction, was not within this act. In that case it appeared that the goods, which were books, weighed two or three tons; and *Wood* B. laid particular stress on that circumstance, and said, it was more than a person going from town to town, or to other men's houses, could carry. That case is directly in point to shew, that the present defendant was not a person within the meaning of this act of parliament.—*Abbott* C J. I am clearly of opinion, upon the facts of this case, that the defendant was a trading person, travelling from town to town, within the meaning of this act of parliament. The argument urged on the part of the defendant, arising out of the extent of his dealings, would go to shew, that when the inconvenience to the resident tradesman is the greatest, no offence would be committed. I think that there should be no rule in this case. R. R.

50 G.3. c.41.

Dean v. King.

town, and there selling such books, &c. by retail by auction, is a trading person within 50 G.3. c.41.

The Attorney General v. *Tongue, E.* 1823. *M. S.* (*a*) A rule had been granted on behalf of the defendant in this case, (which

1823. Saturday, 3d May.

(*a*) The editor is indebted to Mr. Donne for his obliging attention in communicating this important case.

50 G. 3. c. 41.

The Attorney General v. Tongue.

An information charging a defendant under 50 G. 3. c. 41. as a trading person, going from town to town, &c. &c. with selling at Shrewsbury (by sale at auction) goods, &c. held to be supported by evidence that the defendant lived at Birmingham, and was a trader there: that he went to Shrewsbury and took up a temporary abode at an inn there, and that he employed an auctioneer living at Shrewsbury to sell for him there by auction, goods sent to him there from Birmingham, part of which was proved to be not of his own manufacture, who sold the goods by the defendant's order and under his directions and authority, the defendant remaining in Shrewsbury during the sale;—against the objection that the evidence did not establish a going from town to town, so as to bring the defendant within the statute.

was an information for penalties under stat. 50 *G.* 3. *c.* 41. § 7.) requiring the attorney general to shew cause why the verdict which had been obtained for the crown for one penalty, should not be set aside and judgment entered for the defendant, on the ground that the facts of the case as proved in evidence on the trial before Mr. *Serjeant Bosanquet* at the last assizes for *Salop*, did not bring the defendant within the act on which the information was founded. The information consisted of eighteen counts. The first count stated, that the defendant after the 1st day of *August* 1810, and before, &c. (on the 9th *April*) at *Shrewsbury*, then being a trading person going from town to town, and travelling with a horse, and not being a householder there, and the same place, to wit, *Shrewsbury* aforesaid, not being an usual place of his abode, did then and there, to wit, on the day and in the year last aforesaid, at *Shrewsbury* aforesaid, by a certain device, that is to say, by a sale at auction, vend and sell by one *Charles Hulbert*, his agent in that behalf, by knocking down of hammer, certain goods, wares, and merchandize, to wit, &c. (enumerating and describing them) against the form, &c. whereby, &c. the said defendant had forfeited for his said offence 50*l.*, &c. The second count varied from the first only by substituting travelling *on foot* for travelling with a horse. The third count described the defendant as "*being a hawker and pedlar*" there (at *Shrewsbury*), not being a householder there, and that place not being an usual place of his abode, &c., and charged that he by the said *Charles Hulbert*, his agent in that behalf, sold by auction at that place divers goods, &c. (as before). The fourth, fifth, and sixth counts differed from the first three only by charging that the defendant did "himself" sell by auction, &c. instead of selling by an agent. The six following counts charged other penalties to have been incurred on the 10th *April*; and the six last counts charged that other penalties were incurred on the 11th *April*, by the same acts. The defendant pleaded not guilty to the whole information. From the learned serjeant's report, as now read by Mr. Baron *Hullock*, it appeared to have been proved by the testimony of the principal witness for the crown, *Hulbert*, the auctioneer who carried on business at *Shrewsbury*, that the defendant was a silversmith and jeweller *residing at Birmingham* and *not at Shrewsbury*, that he had on a certain occasion employed the witness to sell for him by auction at *Shrewsbury* several chests of various articles, principally jewellery, cutlery, plate, and plated and japanned goods, which were sent over for the purpose of being so disposed of from the defendant's residence at *Birmingham*, to the witness at *Shrewsbury*; and that the defendant came over to *Shrewsbury* and remained there during the sale, which continued from the 3d to the 11th of *April*, with the exception of two intervening days, being *Good Friday* and *Sunday*, under the direction of the defendant, who resided during his stay at *Shrewsbury* at an inn there. Another witness, who was an auctioneer at *Hereford*, proved that he had been also employed by the defendant to sell for him goods of a similar description, in the same manner at *Hereford*. Witnesses having proved purchases made by them at the sale, other witnesses were called to prove that they had manufactured many of the articles so sent to be sold by the defendant, whom they describedto be what is called "a slaugh-

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terman," which they explained to mean a person who makes it his business to buy goods of manufacturers in an unfinished state, when in order to obtain money to pay their workmen on a *Saturday* night, they are reduced to the necessity of disposing of them in that state. Upon this, the material part of the evidence, the objections of the defendant's counsel were founded, which were *first* (and principally on the point of law), that the defendant was not proved to be a trading person going from town to town, within the meaning of the act; *secondly*, as matter of evidence, that it was not sufficiently shewn that the person spoken of as having employed *Hulbert* at *Shrewsbury*, was the same person as had employed the auctioneer at *Hereford;* and lastly, that at all events only one penalty could be recovered, as no one witness had fixed any particular day or days on which purchases had been made, so that for any thing that appeared, every thing spoken to might have been sold on the same day, and may have been of the manufacture of the defendant. The Learned Serjeant directed the jury, that if they believed the evidence, independently of the testimony of the *Hereford* auctioneer, they ought to find a verdict for the crown; that if the defendant had sold on more days than one, although the particular days were not made out, the defendant was liable to two penalties, which were all that the crown sought to recover, and he left it to the jury to say whether they thought the defendant's dealing at *Shrewsbury* was a continuation of the same course of trading as was carried on by means of the auctioneer at *Hereford*. The jury found a verdict for one penalty; and they said that they did not find that the person who had employed the auctioneer at *Hereford*, was the same person as had employed *Hulbert* at *Shrewsbury*. The verdict was then taken *on the third count*, the learned serjeant reserving the point of law by giving the defendant leave to move that the verdict for the crown should be set aside, and a verdict entered for the defendant. When the rule for that purpose was applied for, the motion was supported by the following propositions: — that the third count had clearly not charged a complete offence, in not stating enough to constitute the offence meant to be charged; and in not negativing the possession of the legal qualifications of a hawker by the defendant; that the offence charged by the first count was not supported by the evidence; it was not proved that the defendant was a hawker (licensed) or a trading person (other than a hawker) going from town to town; for that the going from *Birmingham*, the place of the defendant's abode, to *Shrewsbury*, was not a going from town to town or to other men's houses, within the act, but that it was no more than a going to one town and to one house; and they submitted, that the words "going from town to town or to other person's houses," necessarily meant going from and to more towns than one; and that exclusively of the party's town of residence, and to more than one house. — [Mr. Baron *Hullock* here suggested the case of *The King* v. *The Inhabitants of Gamlingay*, 3 *Term. Rep.* 513., as an instance wherein the preposition "from" was considered to be exclusive;] that in point of fact there was only one single act of selling proved, which was not sufficient to constitute the offence of trading as a hawker and pedlar or person travelling, &c. within the act of parliament, unless other acts of selling were completely

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distinct, so as to make him a trading person, and on that point they cited the authority of the decision in the case of *The King* v. *Little* (*ante*), where it was determined that a single act of selling did not constitute a trading as a hawker. They adverted to the cases of *The King* v. *Turner* (*ante*, p. 782), and *Dean* q. t. *v. King* (*ante*, p. 784.), in both which cases the defendants were held to be trading persons within this statute, in order to distinguish the present from those by the fact proved in those cases, that the defendant had sold in two towns, neither of which was his usual place of abode. The case of *Allen* v. *Sparkhall* (*ante*, p. 782.), also they distinguished by the form of the declaration, the defendant there being charged with the fact of selling as a (licensed) hawker; but they particularly referred to the case of *Dean* q. t. *v. Hereford* (*ante*, 785.) as a decision of Mr. Baron *Wood* on this point in favour of the defendant. They therefore contended, that the defendant had not been proved to be either a trading person travelling from town to town and selling by auction, or a hawker, &c. selling by auction; and consequently the action could not be maintained, and the verdict must be set aside, and they urged that it would be injurious to the internal commerce of the country to hold that this defendant was within the statute. — *Pearson* and *Winter*, on these grounds, obtained the rule. — *Jervis*, *Taunton*, *Puller*, and *Russell* now shewed cause: their arguments urged against the rule in substance negatived the propositions advanced by the counsel for the defendant, asserting, that the going from *Birmingham* to *Shrewsbury* was a travelling from town to town within the act, and that the selling proved was a sufficient trading, the defendant having been proved to be a general dealer in the articles sold by him. They mentioned a case of *Dean* q. t. v. *Scholes*, (*a*) in which Mr. Baron *Graham* was said to have determined this very question at Nisi Prius. — As to the verdict having been entered on the third count, they insisted, that this being an information by the attorney-general, the crown was not bound by that entry, but might shift it to any other which the evidence would support, if the offence charged in the particular count on which it had been entered up were not sufficiently proved. *Pearson* and *Winter* having been heard in support of the rule, *Jervis* was stopped by the court in rising to reply. — *Graham*, Baron. I cannot bring my mind to entertain any serious doubt in this case; for I think that the offence charged in the first count of the information is fully proved by the evidence, notwithstanding the objections which have been raised. I think we may fairly put the cases which havebeen cited in support of this rule out of the question in this instance, because they do not apply to the case now before us. The object of the legislature in passing the act upon which this information is founded, was to protect on the one hand fair traders, particularly established shopkeepers, resident permanently in towns or other

(*a*) This was an action to recover several penalties of 50*l.* under 50 G.3. c.41. § 7. tried by Baron *Graham* at the Spring assizes 1820, at *Cambridge*. The facts in proof were shortly these: — That defendant resided at *Hull* and forwarded thence in a vessel by water carriage, a quantity of earthenware, to *Wisbeach*: that he personally went by land from *Hull* to *Wisbeach*, where he employed a resident auctioneer to sell the goods by auction; and that there were two days' sale by auction: there was no proof of defendant having similarly sold before or after either at *Wisbeach* or elsewhere. — B. *Graham* directed a verdict for two penalties — one for each day's sale at *Wisbeach*; and the jury found accordingly.

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places, and paying rent and taxes there, and for local privileges, from the mischiefs of being undersold by itinerant persons to their injury; and, on the other, to guard the public from the impositions practised by such persons in the course of their dealings, and who have no known or fixed residence, but carry on a trade by means of vending goods conveyed from place to place by horse or cart. The provisions of the statute are wise and salutary; and it should, therefore, be construed liberally and comprehensively. [Stating the 7th section.] There is a distinction made between persons being hawkers, and trading persons travelling from town to town to sell their goods; and the principal question which has been made is, — Whether the circumstances upon which this verdict is founded are sufficient to bring the defendant as a person of that description within the prohibition contained in that section. I pass over the preliminary point which was raised, that the verdict could not be shifted, being clearly of opinion, that in an information of this nature, as in an indictment, if there be any count on which the conviction may be sustained it will be sufficient, and punishment must necessarily follow. I am, indeed, also of opinion, that the evidence supports the charge in the third count; for, I consider, that there was sufficient proof of his trading at Shrewsbury as a hawker and pedlar. The case of *The King* v. *Little* was very different in its circumstances from this: there the defendant was proved to have done only one single act, by selling a parcel of silk handkerchiefs to a particular person: here the defendant sent over to *Shrewsbury* a quantity of goods to a considerable amount in value, enough to stock the temporary shop which he opened there, to undersell the fair trader there, which he disposed of by way of auction. I cannot myself entertain any doubt, therefore, that the defendant was trading at *Shrewsbury* in the character of hawker, pedlar, or petty chapman, and that he comes within the description of persons prohibited from so selling goods by this act of parliament. I, therefore, think the third count is made out upon the evidence as it stands. — The objection taken to the proof as applied to the first count is, that there was no evidence of the defendant being a person going from town to town and selling goods. I am, however, clearly of opinion, that he is proved to have been such a person, and that it was sufficient for that purpose to shew that he left *Birmingham*, his place of residence and business, to go to *Shrewsbury*, in order to sell his goods; and on that part of the case I do not think that the decision in *The King* v. *The Inhab. of Gamlingay* at all applies: for this is not a question upon which the construction of the words "from" and "to," as used in particular cases, has any bearing. The case before Mr. Baron *Wood* is mainly distinguishable from this. The defendant there took a house in the place where he sold the goods. The case which has been adverted to as tried before me at Nisi Prius, I well remember was very strenuously defended, and no motion was afterwards made to set aside the verdict, on the ground of a misdirection on my part. I am clearly of opinion, that the facts proved in this case are quite sufficient to bring the defendant within the statute. — *Hullock*, B. I shall confine my opinion to the question, — Whether the verdict upon the whole information is supported by the evidence as applied to the offence charged generally? In that

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view of it the question will be,—Whether the defendant is brought, by the facts proved in this case, within the act of parliament on which the information is founded? [having read the 6th and 7th sections.] The act clearly contemplates other persons than hawkers, and a selling at other towns and houses than that of the dealer's residence; and that is an answer to the case said to have been determined by Mr. Baron *Wood*, if the facts of that case are correctly stated, but it is so loosely put that very little can be made of it as given in the report. I certainly am not prepared to say, that the third count of this information can be sustained under the circumstances in evidence. I proceed upon the whole information, applying the evidence to it generally, for if any count can be sustained it will be sufficient. I am of opinion, that the defendant has been proved to be a person going from town to town selling goods within the meaning of the act; and this information charges an offence within the mischief it was intended to suppress. The argument is, that the person must make a practice of doing this, and that he must go to more than one town besides that of his residence. If that were so the statute would be rendered nugatory; for a person might carry on business to any extent with impunity, provided he returns to the place of his residence after he has sold his goods, before he carries other goods to another town to sell them there, making his place of abode the *terminus a quo;* for by such means he would place himself out of the reach of this statute, and paralyze the provisions of the act. If the statute warranted such a construction, I by no means intend to say, that we should not be bound so to construe it, notwithstanding that would be the effect of it. It was said that this decision would injure the internal commerce of the country. I do not think it would have any such result. The only prohibition enacted by the statute is, that persons shall not sell their goods in this manner. His lordship then concluded by distinguishing this case from those cited; and by saying, that on the whole case he was of opinion that this rule ought to be discharged. R. D.

The Lord Chief Baron and Mr. Baron *Garrow* were absent from indisposition.

§ VI. Packages to be marked.

[50 G. 3. c. 41. § 14, 15.]

50 G. 3. c. 41. Packages of hawker to have the words 'Licensed Hawker,' &c.

By stat. 50 *G.* 3. *c.* 41. § 14. Every person to whom any such licence as aforesaid shall be granted under or by virtue of this act, and who shall trade with or under colour of such licence, shall cause to be written, painted, or printed in large legible roman capitals, upon the most conspicuous part of every pack, box, bag, trunk, case, cart, or waggon, or other vehicle or conveyance in which he or she shall carry his or her goods, wares, and merchandize, and of every room and shop in which he or she shall so trade, and likewise upon every hand bill or advertisement which he or she shall give out, distribute, or publish, the words '*licensed hawker,*' together with the number, name, or other mark or marks of distinction so written or printed upon his or her licence as

aforesaid; and that every such person in any respect making default herein shall forfeit for every offence the sum of 10*l.* (A. D. E. F. G.) 50 G. 3. c. 41. Penalty. A. D. E. F. G.

§ 15. If at any time after the 1st of *August*, 1810, any person, other than to whom such licence shall have been so granted as aforesaid, shall write, paint, or print, or cause to be written, painted, or printed, or kept or continue written, painted, or printed, upon any pack, bag, box, trunk, case, cart, waggon, or other vehicle or conveyance for any goods, wares, or merchandize, or in any room or shop in which he or she shall sell or expose to sale, or keep for sale, any goods, wares, or merchandize, the words *licensed hawker* or *licensed pedlar*, or any other word or words to that effect, any person so offending herein shall forfeit for each offence the sum of 10*l.* (B. D. E. F. G.) Persons not licensed using such words. Penalty. B. D. E. F. G.

§ VII. Dealing in Smuggled Goods.

[50 G. 3. c. 41. § 16.]

By stat. 50 G. 3. *c.* 41. § 16. If any hawker, pedlar, petty chapman, or other trading person as aforesaid, shall from and after the first of *August*, 1810, be convicted of knowingly dealing in, vending, or selling any kind of smuggled, contraband, or prohibited goods, wares, or merchandize, or knowingly dealing in, vending, or selling any goods, wares, or merchandize fraudulently or dishonestly procured, either by themselves or through the medium of others, with their privity and knowledge, every such hawker, pedlar, petty chapman, or trading person, shall from and after such conviction forfeit his or her licence, and for ever thereafter be incapable of obtaining or holding any new licence, or dealing, trafficking, or trading under the same; and over and above all such forfeitures and incapacities, fines and penalties, to which he or she is or shall be by law subject and liable for such illicit and illegal trafficking and dealing. Hawkers dealing in smuggled goods shall forfeit their licence.

§ VIII. Trading contrary to or without a Licence or refusing to produce it.

[50 G. 3. c. 41. § 17. 20.]

By stat. 50 *G.* 3. *c.* 41. § 17. If any such hawker, pedlar, or petty chapman, or other trading person so travelling as aforesaid, shall after the 1st of *August*, 1810, trade as aforesaid without, or contrary to, or otherwise than as shall be allowed by such licence, such person shall for each and every such offence forfeit the sum of 10*l.* to be recovered (C. D. E. F. G.) and applied as herein-after mentioned; and if any person trading under or by virtue of any licence to him or her granted as aforesaid, upon demand made by any person or persons authorized or appointed to demand any such licence by the commissioners for licensing hawkers, pedlars, and petty chapmen for the time being, or any two of them, under their hands and seals, and upon producing or shewing such authority or appointment to such person so trading as last aforesaid, or upon demand made by any justice of the peace, mayor, constable, or other officer of the peace of any county, Hawkers trading contrary to licence. Penalty. C. D. E. F. G.

50 G.3. c.41. riding, division, town corporate, borough, or place where he or she shall so trade, or by any officer of the customs or excise, or by any person to whom such hawker, pedlar, or petty chapman shall offer any goods to sale, shall refuse to produce and shew his or her licence for so trading as aforesaid, or shall not have his or her licence ready to produce and shew unto such person authorized or appointed as last aforesaid, or unto such justice of the peace, mayor, constable, or other officer of the customs or excise, then the person so refusing, or not having his or her licence ready to produce and shew as aforesaid, shall forfeit 10*l.*, to be recovered

C. D. E. F. G. (C. D. E. F. G.) and applied as herein-after mentioned, and for non-payment thereof shall suffer as a common vagrant, and be committed to the house of correction.

Persons trading without a licence, or refusing to produce it, may be detained and taken before a justice.

§ 20. It shall be lawful for any person or persons whatsoever to seize and detain any such hawker, pedlar, petty chapman, or other trading person as aforesaid, who shall be found trading without a licence contrary to this act, or who being found trading shall refuse or neglect to produce to such person or persons a licence according to this act, after being required so to do for a reasonable time, in order to give notice to a constable, headborough, tithingman, or other peace officer or officers, who are hereby required to carry such person so seized, unless they shall in the meantime produce their respective licences, before some one of H. M.'s justices of the peace of the county or place where such offence or offences shall be committed; which said justice of the peace is hereby authorized and strictly required to examine into the fact or facts charged; and upon the proof, either by confession of the party offending, or by the oath of one or more credible witness or witnesses (which the said justice is hereby empowered to administer), that the person so brought before him had so traded as aforesaid, and no such licence being produced by such offender

E. before the said justice, to convict (E.) the offender so trading

Penalty for trading without a licence. without a licence; and thereupon it shall be lawful for such justice, and he is hereby required, by warrant under his hand and seal, to cause the said sum of 40*l*, to be levied by distress (F.)

F. and sale of the goods, wares, or merchandise of such offender or

(*a*) *Sic.* Query, 'with which?' offenders, or of the goods which (*a*) such offender or offenders shall be found trading as aforesaid, rendering the overplus, if any be, to the owner or owners thereof, after deducting the reasonable charges for making such distress, and out of the said sale to pay the said respective penalties and forfeitures aforesaid; and in the

G. meantime to commit (G.) such offender to the common gaol or house of correction for the county, riding, division, city, liberty, town, or place where the said offence shall be committed, there to remain until the said penalties and forfeitures, and the reasonable charges of taking the said distress, shall be levied by such distress and sale as aforesaid, or until the same shall be otherwise paid or satisfied by such offender.

Since the passing of stat. 50 G.3. c.41., the manufacturer of goods is allowed to hawk them in those places

Rex v. *Websdell*, *T.* 4 *G.* 4. 2 *B. & C.* 136. Conviction under stat. 50 *G.* 3. *c.* 41. for hawking shoes without a licence. The conviction set out an information, that the defendant, on, &c., at *Cromer* in the county of *Norfolk*, was a hawker and trading person, going to other men's houses, &c., and being such person, did, on the day aforesaid, at *Cromer*, carry to sell, and expose to sale, divers goods, wares, &c., to wit, a quantity of shoes, and was

50 G. 3. c. 41.

Rex v. Websdell.

only which are mentioned in the 23d sect. of that act. The defendant was convicted in a penalty of 10*l.* for trading as a hawker, *without any licence* so to do: Held, that the conviction was in the proper sum.

then and there found trading *without any licence* so to do; whereupon he was summoned, &c., and the justice did convict him of the said offence, and adjudge that he had forfeited the sum of 10*l.* The sessions, upon an appeal, quashed the conviction, subject to the opinion of this court, upon the following case:—It was fully proved, on behalf of the appellant, that he was a shoemaker, and that he was the real worker or maker of the said shoes, which he "carried to sell and exposed to sale:" but as it appeared from the evidence that *Cromer* was not a mart, market, or fair, nor a city, borough, town corporate, or market town, the court were of opinion that the conviction was good, although the words "or elsewhere," omitted in the 50 *G.* 3. *c.* 41., are in the 9 & 10 *W.* 3. *c.* 27. But it was objected, on behalf of the appellant, that the conviction was bad in point of form; first, because in setting forth the offence, it was not stated that the shoes were not of the manufacture of the appellant; and, secondly, because the conviction was under § 20. of the 50 *G.* 3. *c.* 41.; and that therefore the penalty adjudged (if any) should have been 40*l.*, and not 10*l.* And on these grounds the conviction was quashed.—After argument; Per *Bayley J.* There is much obscurity in the 50 *G.* 3. *c.* 41.; nor is it found there for the first time. It has existed from the passing of the 29 *G.* 3. *c.* 26. The 11th and 14th sections of that act are in terms the same as the 17th and 20th sections of the 50 *G.* 3. *c.* 41.; and in both these acts the same difficulty occurs as to imposing a penalty of 10*l.* or 40*l.* It has been contended that a person trading without a licence is liable to the penalty of 40*l.* imposed by the 20th sect., and is not within the 17th section, which imposes a penalty of 10*l.* If that were clear, the conviction in a penalty of 10*l.* would be bad; but the meaning of the act should be quite plain, to induce us to come to such a conclusion, for if there be a doubt we should adopt that construction which will bear with the least hardship on the party convicted. In the 17th section there are three propositions: "If any such hawker shall trade *without*, or *contrary to*, or *otherwise than as shall be allowed by* such licence, he shall forfeit 10*l.*" It does not say, such hawker "having obtained a licence," and trading, &c. There are not then any words confining the operation of that section to a person having obtained a licence; and the fair meaning of the words, "shall trade without such licence," appears to be, "shall trade without having obtained a licence." In *Rex* v. *Turner*, this objection, if good, would have been decisive; yet it was never suggested, and in practice convictions are always for 10*l.* In the last edition of *Burn's Justice* a form is given in which the penalty is 10*l.*; and that is worthy of consideration, although it cannot be treated as an express authority. For these reasons I think that the words in the 17th section, "trading without such licence," are not confined to persons who have obtained a licence and travel without it. If that be the right construction, then the only question is, whether the 23d section exonerates the defendant from any penalty, or whether he is exempted by the proviso in the 9 & 10 *W.* 3. *c.* 27. § 9. If the question had turned upon the 9 & 10 *W.* 3. *c.* 27. he would have been within the exemption, for that authorises the manufacturer of goods to sell them in market towns, &c. *or elsewhere.* That, however, is not an empowering but an exempting clause; and the 29 *G.* 3. *c.* 26.,

50 G. 3. c. 41.

Rex v. Webster.

which imposed a higher duty, contained the same prohibitory clause as the 9 & 10 *W.* 3. That being general would have entirely repealed the exemptions in the former act; but then a new proviso is introduced, differing essentially from that in 9 & 10 *W.* 3. *c.* 27., for the words, *or elsewhere*, are omitted. A similar proviso was introduced into the 50 *G.* 3. *c.* 41.; and it is manifest that the words, *or elsewhere*, were omitted because the legislature thought them too large. I am therefore of opinion, that as the prohibition in the 50 *G.* 3. *c.* 41. is general, and the exempting clause confined to marts, markets, fairs, cities, boroughs, towns corporate, and market towns, the defendant was not justified in selling the articles in question in a place not coming within that enumeration. —*Best J.* (*) The act in question is certainly very obscure, but I think that both points must be determined against the defendant. As to the first, viz. the right of a manufacturer to hawk his own wares; when the 9 & 10 *W.* 3. *c.* 27. was passed, the legislature intended that a manufacturer should be allowed to sell his own goods any where; but the same indulgence was not extended to them by the 50 *G.* 3. *c.* 41. That limited their privileges to certain places. It has been said that the 9 & 10 *W.* 3. *c.* 27. is only repealed as to the duties; but § 31. of the 50 *G.* 3. *c.* 41. shews that every provision of the former act, which would be inconsistent with the latter, was intended to be repealed. But that argument is unnecessary, for the 50 *G.* 3. *c.* 41. imposes new duties; and a person not having the licence thereby required cannot hawk at all, except in those places, and under those circumstances, particularly provided for by that act. As to the other point, it certainly appears difficult to reconcile the 17th and 20th sections of the act. But I think that the defendant was at all events guilty of an offence against the 17th section, and was therefore liable to be convicted in a penalty of 10*l.* Order of sessions quashed, and conviction confirmed. (*a*)

(*) Holroyd J. was sitting at the O. B.

A person exposing to sale and selling tea, as a hawker, without a licence, is liable to the penalty imposed by the 50 G. 3. c. 41. upon hawkers trading without a licence; although, even with a licence, he would be liable to a penalty for selling tea in an unentered place.

The defendant was convicted in a penalty of 10*l*: Held, that it

Rex v. *M'Gill*, *T.* 4 *G.* 4. 2 *B.* & *C.* 142. The defendant was convicted under stat. 50 *G.* 3. *c.* 41. § 17. for hawking tea without a licence. The conviction stated, that on, &c. at, &c. the defendant was charged with being a hawker, &c., carrying to sell, and exposing to sale, without any licence so to do, certain goods, to wit, divers parcels of tea; and that he being such person, did, on the day and year aforesaid, at *Worcester*, carry to sell, and expose to sale, divers parcels of tea, and was then and there found trading as aforesaid, without any licence so to do. The conviction then stated the evidence; and that the justice did thereupon convict him of the same, and adjudge that he had forfeited 10*l.* Upon appeal, the justices at sessions confirmed the conviction, subject to the opinion of the court on the following case: *George M'Gill*, as the agent of *D. S.*, (which *D. S.* at the several times hereafter mentioned was a licensed tea-dealer,) on the 17th of *April*, 1822, at *Worcester*, carried to sell several packages of tea, and then and there, at the house of one *H. G.*, sold to him one of the said packages containing a quarter of a pound weight of tea; and afterwards on the same day, *G. M'Gill*, as such agent, carried to sell, and exposed to sale, at the house of one *W. P.*, another

(*a*) See the next case.

50 G. 3. c. 41.

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was the proper sum.

package containing also a quarter of a pound weight of tea, but did not then and there sell the same. At the several times when he, the said *G. M'Gill*, as such agent, so carried to sell, and exposedto sale, the said first-mentioned quarter of a pound of tea, neither he, nor *D. S.*, his employer, had any hawkers' licence according to 50 *G.* 3. *c.* 41. — In support of the order of sessions, *Rex* v. *Turner*, (*ante*, p. 784.) was cited as a decisive authority that agents are liable. And it was argued that, if a party be charged with trading as a hawker without a licence, it is no answer to say, that by the same act he offended against another statute also; for a man may by one act commit several misdemeanors. [*Best* J. If an unqualified person kill game without taking out a licence, he is liable to a penalty for so doing, although a licence would not protect him from the penalty imposed upon unqualified persons.] That argument is conclusive against the defendant.—Contra.—It was contended that the defendant then should have been convicted under the 12 *G.* 3. *c.* 46. § 6.; and not under the hawkers and pedlars' act, 50 *G.* 3. *c.* 41. *Cur. ad. vult.*—The judgment of the court was, on a subsequent day during the sittings, pronounced by *Bayley* J. The question principally agitated in this case was, whether a person exposing tea to sale as a hawker was liable to the penalty imposed by the 50 *G.* 3. *c.* 41. upon persons trading as hawkers without a licence. There was also another point which might have been raised; and upon which the court delivered an opinion in *R.* v. *Websdell*, viz. whether the penalty of 10*l.* was that which ought to have been imposed. The court then thought 10*l.* the right penalty, and that opinion has been confirmed by a further consideration of the subject. As to the first point, it was argued, that inasmuch as one act of parliament had made it illegal to sell tea in any but an entered place, and another had provided that no hawker should sell tea; that, therefore, a hawker was not liable to a penalty for exposing it to sale without a hawker's licence. If the 50 *G.* 3. *c.* 41. had been the first act upon the subject, and no penalty had previously existed for trading as a hawker without a licence, there might, perhaps, have been some doubt whether it extended to any cases in which a licence would not have legalized the sale; but looking at the whole series of enactments relating to hawkers and pedlars, and taking into consideration the time when they were first prevented from selling tea, it will be plain that they are still liable to a penalty for selling it as hawkers without a licence. The first enactment respecting them was the 8 & 9 *W.* 3. *c.* 25. (*a*), which is nearly the same as the 9 & 10 *W.* 3. *c.* 27., and contains two clauses material as to the amount of the penalty to be imposed. The 17th section of the 50 *G.* 3. *c.* 41. has this provision, "that if any such hawker shall trade as aforesaid, without, or contrary to, or otherwise than as shall be allowed by such licence, such person shall, for every such offence, forfeit the sum of 10*l.*" Three terms are there introduced, "without," "contrary to," or "otherwise than as shall be allowed by," such licence; and it will hereafter appear, that those terms were advisedly introduced to apply to three descriptions of offences.

(*a*) Not printed at length in the quarto edition, but in the folio edition, published by order of the House of Lords.

50 G. 3. c. 41.

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§ 20. Enacts, that any person may seize any such hawker found trading without a licence, or, who, being found trading, shall refuse to produce a licence, and have him carried before a magistrate, who is thereby authorized to convict the person so charged, and by warrant under seal to cause the *said sum* of 40*l.* to be levied. Now, that section does not expressly impose any penalty; and the 17th section, to which it apparently refers, has a penalty of 10*l.*, and not 40*l.*: it is, therefore, fair to suppose that the sum in the 20th section should have been 10*l.*, and not 40*l.*, and that the latter sum was inserted by mistake; and an examination of the earlier statutes on this subject will shew clearly that such was the fact. The 19th section imposes a penalty of 40*l.* upon any person trading with a borrowed licence, or one that does not contain his real name. The 8 & 9 *W.* 3., and 9 & 10 *W.* 3. *c.* 27., had not any such clause; the 3d section of the latter imposed a penalty of 12*l.* upon hawkers trading "without," or "contrary to," such licence as the first section requires them to take. The fifth section imposes a penalty of 50*l.* for travelling with a forged licence; and the 8th section authorises the apprehension of hawkers travelling without a licence, contrary to the act, and directs that they shall be taken before a magistrate, who, if the offence be proved, shall convict them, and forthwith direct the *said sum* of 12*l.* to be levied by distress, &c. The *said sum* of 12*l.* there manifestly refers to the penalty imposed by the third section, that being the only sum of 12*l.* which had been before mentioned; and the expressions "without a licence," and "contrary to the act," in the eighth section, are applicable to the trading without or contrary to the licence mentioned in the third section. The next act material to be considered on this point is the 25 *G.* 3. *c.* 78.; but in the meantime some alteration was made in the law as to the sale of tea and cambrics. The 10 *G.* 1. *c.* 10. § 14. provided, that tea should not be sold except in an entered place. By that provision the right to sell it was made local; the 9 *G.* 2. *c.* 35. § 20. enacted, that it should not be sold by any hawker and pedlar. The object of the statutes before cited, more particularly applying to hawkers and pedlars, appears to have been to protect domiciled tradesmen; of the two latter, to assist the collection of duties. The effect of them is, not to destroy the former prohibition against trading as a hawker without a licence, but to add a cumulative penalty for hawking tea, even with a licence; for the two provisions are consistent, and may well stand together. The first imposes a penalty upon persons trading at all as hawkers without a licence; the second imposes a penalty upon the sale of tea by hawkers, even with a licence; and, therefore, a person who exposes tea to sale as a hawker, and has no licence, offends against both the abovementioned provisions, and is liable to a penalty for each breach of the law. The 7 *G.* 3. *c.* 43. § 7. made cambrics found in the possession of any hawker or pedlar liable to forfeiture. Then came the 25 *G.* 3. *c.* 78., as to hawkers and pedlars, the fourth section of which resembles the third of the 9 & 10 *W.* 3. *c.* 27., but has this difference: the penalty was before confined to persons trading "without" or "contrary to" the licence; this enactment has the additional words "or otherwise than as shall be allowed by" such licence. That expression could only be applicable to those cases in which a licence would not legalise the trading. The

25 G. 3. c. 78. § 4. alters the penalty from 12*l.* to 10*l.*; and between the fourth section, which corresponds to the third section of the 9 & 10 *W.* 3., and the seventh section, which corresponds to the eighth section of the former act, introduces in § 6. a provision, that persons trading with a borrowed licence shall be liable to a penalty of 10*l.* In the seventh section, which, as in the former act, refers to the first penalty of 10*l.*, the expression "*said sum* of 10*l.*" is retained. The *25 G. 3. c.* 78. was repealed by the *29 G. 3. c.* 26., which, however, contained most of the same provisions. Thus the eleventh and fourteenth sections of the latter correspond with the fourth and seventh of the former; the thirteenth section also of the latter corresponds with the sixth section of the former, except as to the amount of the penalty, which was raised from 10*l.* to 40*l.*; and this shews how the mistake in the fourteenth section arose. In the *25 G. 3. c.* 78. two penalties of 10*l.* had been imposed in different sections preceding that in which the justice is directed to cause the *said sum* of 10*l.* to be levied. In the *29 G. 3. c.* 26. one of those penalties was increased to 40*l.*; and it must have been erroneously supposed that the expression *said sum* referred to that penalty which was raised, and not to that for trading without, or contrary to, or otherwise than as allowed by, the licence, which still remained a 10*l.* penalty. These sections were exactly followed in the *50 G. 3. c.* 41., and in like manner the mistake crept into that act also. Upon the question, whether the defendant is liable to a penalty for selling tea, as a hawker, without a licence, we are of opinion that he is; and that the words, "otherwise than as allowed by the licence," introduced into the modern acts relating to hawkers and pedlars, shews that when hawkers were prevented from selling tea even with a licence, it was not intended to exempt them from the penalty before imposed upon the sale of *any* goods, wares, &c. without a licence. For these reasons, we think that the conviction was right.—Order of sessions confirmed.

50 G. 3. c. 41.

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§ IX. Hiring or lending Licences.

[50 G. 3. c. 41. § 19.]

Persons hiring or lending licence.

By stat. *50 G. 3. c.* 41. § 19. In case any person shall let out or hire or lend any licence to him or her granted as aforesaid, or shall trade with or under colour of any licence granted unto any person whatsoever, or of any icence in which his or her own real name shall not be inserted as the name of the person to whom the same is granted, the person letting out to hire or lending any such licence, and the person so trading with or under colour of any licence granted to any other person, or any licence in which his or her own real name shall not be inserted as the name of the person to whom the same is granted, shall each of them forfeit the sum of 40*l.*, to be recovered and applied as hereinafter mentioned; and in case any person shall be convicted or have judgment against him for lending his or her licence to any other person or persons contrary to this act, such his or her licence shall be from henceforth forfeited and void, and he or she shall be utterly incapable of having any licence again granted to him or her to trade as aforesaid: Provided always, that nothing herein contained shall subject to the said penalty any servant tra-

Penalty.

Servant travelling for a licensed master.

50 G. 3. c. 41. A hawker who gives his licence to be used by his servant employed to sell goods on his account is not liable to the penalty, as for *letting* to *hire* or lending his licence.

velling for a licensed master with the licence of such master, and for his benefit, or any licensed master sending such servant to travel with such licence.

Let out to hire or lend] *Hodgson* q. t. *v. Flower*, 2 *Campb.* 290. This was an action of debt on stat. 29 *G.* 3. *c.* 26. § 13. to recover the penalty of 40*l.* from the defendant for *letting out to hire and lending* his licence to one *B. W.* The second count was for unlawfully *lending* the licence. It appeared that *W.* was the defendant's servant, and was in the habit of going about selling coals for his master, and received 4*s.* 6*d.* a chaldron upon the coals he sold. And it was held by Lord *Ellenborough*, C. J. that no forfeiture was incurred by the defendant, and that an action could not be maintained against a master for sending out a servant with a licence.—And he cited in point *Chamberlain* q. t. v. *Hill, H. T.* 44 *G.* 3.

§ X. Penalty on forging Licences.

[50 G. 3. c. 41. § 18.]

Penalty on persons forging or using forged licences, 300*l.*

By stat. 50 *G.* 3. *c.* 41. § 18. If any person shall forge or counterfeit any licence by this act directed to be granted, or travel with, or produce, or shew any such forged or counterfeited licence, for any of the purposes aforesaid, every such person shall, for every such offence, forfeit the sum of 300*l.*, to be recovered and applied as hereinafter directed.

§ XI. Duties of Constables.

[50 G. 3. c. 41. § 21.]

Penalty on constables refusing to assist in execution of this act.

By stat. 50 *G.* 3. *c.* 41. § 21. If any constable, headborough, or tithingman, or other officer of the peace, shall refuse or neglect, upon due notice, or on his own view, to be aiding and assisting in the execution of this act, being thereunto required, and is thereof convicted upon his confession, or by the oath of one witness, before any justice of the peace for the county or place where the offence shall be committed, he shall forfeit, for each and every such offence, the sum of 10*l.*, to be recovered and applied as hereafter mentioned.

§ XII. Recovery of Penalties.

[50 G. 3. c. 41. § 24, 25, 26. 32.]

Penalties above 20*l.* where to be recovered.

By stat. 50 *G.* 3. *c.* 41. § 24. All pecuniary penalties incurred under this act, of a greater sum than 20*l.* shall be recovered with costs, in any courts of record at *Westminster*, by action of debt, or information, wherein no essoign, &c. and only one imparlance shall be allowed; and one moiety of every such penalty shall belong to H. M., and the other moiety to the person or persons who shall sue for the same.

Penalties under 20*l.* how to be recovered.

§ 25. In all cases where the pecuniary penalty by this act imposed does not exceed the sum of 20*l.*, it shall be recoverable before one of H. M.'s justices of the peace of the county, riding, shire, division, city, liberty, town, or place wherein the offence shall be

committed, on proof of the offence, either by voluntary confession of the party or parties accused, or by the oath of one or more credible witness or witnesses; and one moiety of every such last-mentioned penalty shall belong to H. M., and the other moiety to the informer or informers prosecuting for the same; and in case of non-payment, the said justice, by warrant under his hand and seal, (F.) shall cause the same to be levied by distress and sale of the offender's goods and chattels, or of the goods and chattels with which such offender shall be found trading; and the overplus of the money raised, after deducting the penalty and expence of the distress and sale, shall be rendered to the owner; and shall also commit (G.) the offender to the prison of such county, shire, division, city, liberty, town, or place, there to remain until the said penalties, and the reasonable charges of taking the said distress, shall be levied by such distress and sale as aforesaid, or until the same shall be paid or satisfied by such offender; and it shall be lawful for any such justice of the peace, by his warrant, to cause such offender to be apprehended and brought before him, to answer to any charge or complaint for any such penalty, and to commit such offender to prison as aforesaid until the hearing of such charge or complaint, unless he or she shall and do enter into a recognizance before such justice, with two sufficient sureties, in a sufficient sum to be ordered by such justice, to appear at the hearing of such charge or complaint.

50 G. 3. c. 41.

F.

G.

§ 26. No person committed to any gaol or house of correction, for any offence committed against this act, shall be detained in such gaol or house of correction for any longer space of time than three months.

Time of commitment not to exceed three months.

§ 32. If any person shall be summoned as a witness to give evidence before any justice or justices of the peace touching any of the matters relative to this act, or stat. 9 & 10 *W.* 3. *c.* 27., and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed of by such justice or justices of the peace, or appearing, shall refuse to be examined upon oath and give evidence before such justice or justices of the peace before whom the prosecution shall be depending, every such person shall forfeit for every such offence the sum of 10*l.*, to be recovered, (C. D. E. F. G.) levied, and paid in such manner and by such means as are herein directed as to the other penalties.

Penalty on witnesses refusing to attend or to give evidence.

C. D. E. F. G.

§ XIII. Of Appeal.

[50 G. 3. *c.* 41. § 27.]

By stat. 50 *G.* 3. *c.* 41. § 27. If any person or persons shall find himself, herself, or themselves aggrieved by the judgment of any such justice, then he, she, or they shall or may, upon entering into recognizance with two sufficient sureties, to be approved by such justice, to the amount of the value of such penalty and forfeiture, together with a sum which, in the judgment of such justice, shall be adequate to the amount of the costs which may be awarded, conditioned to pay the amount of such penalties, forfeitures, and costs as shall be adjudged, in case such judgment shall be affirmed, appeal to the justices of the peace at the next general sessions for the county, riding, or place,† are

Appeal may be made to quarter sessions.

† *Sic.* Query, 'who.'

50 G. 3. c. 41. hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same, or at their discretion to state the facts especially for the determination of H. M.'s court of K. B. thereon; and in case the judgment of such justice shall be affirmed, it shall be lawful for such justices, or the court of K. B., to award the person or persons to pay such costs occasioned by such appeal, as to them shall seem meet.

Costs.

§ XIV. Conviction. — General Issue.

[50 G. 3. c. 41. § 28, 29, 30. 34.]

Convictions to be in the following form.

By stat. 50 *G.* 3. *c.* 41. § 28. A conviction in the form or to the effect following, *mutatis mutandis*, as the case shall happen to be, shall be good, without stating the evidence, and without alleging more than the substance of the offence, in all cases wherein any such justice of the peace hath power to convict by virtue of the present act;

BE it remembered, That on the ——— *day of* ———, *in the year of our Lord* ———, *at* ——— *in the county of* ———, A. B. *came before me* C. D., *one of his majesty's justices of the peace for the said county, residing near the place where the offence hereinafter mentioned was committed, and informed me that* E. F., *of* ———, *in the said county of* ———, [here set forth the fact for which the information is laid], *whereupon the said* E. F., *being duly summoned to answer the said charge, appeared before me* (*and having heard the charge contained in the said information, acknowledged and voluntarily confessed the facts therein stated to be true*); *but in his* [or *her*] *defence alleged* [here setting forth the substance of the defence] *or voluntarily confessed the said charge to be true, or did not make any defence against the said charge, whereupon the same was fully proved on the oath of* G. H., *a credible witness, or said that he* [or *she*] *was not guilty of the said offence, whereupon the same was fully proved on the oath of* G. H., *a credible witness* [or as the case shall be], *or did not appear before me pursuant to the said summons, but the said charge was fully proved on the oath of* G. H., *a credible witness* or as the case shall be], *and therefore it manifestly appearing to me that the said* E. F. *is guilty of the offence charged in the said information, I do hereby convict him* [*or* her] *of the said offence, and do adjudge that he* [or *she*] *hath forfeited the sum of* ———, *or his* [or *her*] *licence and the sum of* ——— *of lawful money of* Great Britain, *to be distributed as the law directs, according to the form of the statute in such case made and provided. Given under my hand and seal the* ———.

Convictions not to be removed.

§ 29. No conviction upon this act shall be removed by certiorari or otherwise into H. M.'s court of K. B., or any other court, save upon an appeal as by this act directed. (See § 27. p. 799.)

Justices shall transmit to the commissioners for licensing hawkers, accounts of convictions, and of the penalties belonging to

§ 30. Every justice before whom any such person shall be convicted of any offence under this act, shall receive H. M.'s share of the penalty levied or paid under such conviction; and every such justice, his executors or administrators, shall pay or cause to be paid all such sums which he shall so receive upon any conviction under this act, at the next general sessions of the peace after he shall have so received the same, into the hands of the clerk of the peace, or other such like officer for the county, riding, or place

within which such conviction shall have been made, who is hereby directed to remit the same forthwith, without fee or reward, to the said commissioners for licensing hawkers, pedlars, and petty chapmen, or to such person as the greatest part of them shall appoint; and every justice, his executors or administrators, shall, immediately on such payment made to any clerk of the peace or other such officer, transmit a like schedule to the said commissioners, or to such person as they shall appoint.

50 G. 3. c. 41.

H. M., and pay over the money in their hands to the clerk of the peace, who shall remit the same to the commissioners, &c.

§ 34. If any person shall be sued for any thing done in pursuance of this act, such person may plead the general issue, and give the special matter in evidence; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuited, or judgment shall be recovered against him upon demurrer, or discontinues, or be non-prossed, such defendant shall have treble costs.

Persons sued may plead the general issue.

(A.) Information against a licensed Hawker for not having the Words "*Licensed Hawker*," &c. painted upon his Pack, &c., pursuant to Stat. 50 *G.* 3. *c.* 41. § 14. Vide *ante*, p. 790. (A.)

County of ——— } *THE information and complaint of* A. I., *of* ———, *in the said county,* ——— *who informs as well for our lord the now king as for himself in this behalf, made before me Sir* G. C. *baronet, one of his majesty's justices of the peace for the said county of* ———, *on the* ——— *day of* ———, *in the* ——— *year of the reign of our said lord the now king, who saith that a certain licence now in force, subscribed by one or more of the commissioners for licensing and regulating hackney coaches, hawkers, and pedlars, was at a certain day now past granted to* A. O., *late of* ———, *in the said county, to travel and trade as a hawker, pedlar, and petty chapman, under or by virtue of a certain act of parliament made and passed in the fiftieth year of the reign of his late majesty king* George *the third, intituled* "An act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches;" *and that the said* A. O., *being the person to whom such licence aforesaid was granted as aforesaid, and also being a trading person going from town to town* [or, to other men's houses], *and travelling on foot,* [or, *with a horse,* or as the case may be], *in* England [or, *Wales*, or, as the fact may be], *carrying to sell and exposing to sale goods, wares, and merchandize, did on the* ——— *day of* ——— *in the said year of the reign of our said lord the now king, at* ———, *in the* ———, *trade with or under colour of such licence, by hawking for sale goods, wares, and merchandize, to wit* [here describe the goods], *and did then and there, to wit at* ——— *aforesaid, carry the said goods, wares, and merchandize in a pack* [or, as the case may be]; *and that the said* A. O. *had not then and there caused to be written, painted, or printed in large legible Roman capitals, upon the most conspicuous part of the said pack* [or, as the case may be], *in which he carried his said goods, wares, and merchandize, the words* "Licensed Hawker," *together with the number, name, or other mark or marks of distinction written or printed upon his said licence as aforesaid, contrary to the form of the statute in that case made and provided, whereby and by force of the same statute the said* A. O. *hath forfeited for his said offence the sum of ten pounds; and thereupon the*

said A. I., *who informs as well for our said lord the now king as for himself in this behalf, prayeth judgment of me the said justice in the premises.*

I receive this information, A. I.

G. C.

(B.)

(B.) Information against a Person not licensed as a Hawker, for having the Words "*Licensed Hawker,*" &c. painted on his Pack, &c. contrary to Stat. 50 *G* 3. *c.* 41. § 15. Vide *ante*, p. 791.

County of ——— to wit. } *THE information and complaint of* A. I. *of* ———, *in the said county of* ———, *who informs as well for our lord the now king as for himself in this behalf, made before me Sir* G. C. *baronet, one of his majesty's justices of the peace for the said county of* ———, *on the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord the now king, who saith that* A. O., *late of* ———, *in the said county,* ——— *being other than any person to whom any licence subscribed by one or more of the commissioners for licensing and regulating hackney coaches, hawkers, and pedlars, to travel and trade as a hawker, pedlar, and petty chapman, under or by virtue of a certain act of parliament made and passed in the fiftieth year of the reign of his late majesty king* George *the third, intituled* "An act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches," *had been granted under or by virtue of the said act, and being also a trading person going and travelling on foot* [or, *with a horse,* or, as the case may be], *in* England [or, *Wales,* or, as the fact may be], *carrying to sell and exposing to sale goods, wares, and merchandize, to wit,* [here describe the goods], *did on the* ——— *day of* ———, *in the said year of our Lord* ———, *at* ———, *in the said county, write, paint, or print, and cause to be written, painted, or printed, and kept and continued written, painted, or printed upon his pack* [or, as the case may be], *and in which said pack* [or, as the case may be], *the said* A. O. *then and there carried his said goods, wares, and merchandize as aforesaid, the words* "Licensed Hawker," &c. [as the fact may be], *contrary to the form of the statute in that case made and provided; whereby and by force of the same statute the said* A. O. *hath forfeited for his said offence the sum of ten pounds; and thereupon the said* A. I., *who informs as well for our said lord the now king as for himself in this behalf, prayeth judgment of me the said justice in the premises.* A. I.

I receive this information,

G. C.

(C.) Information against a Hawker for trading without a Licence [or, *as the case may be*], contrary to Stat. 50 G. 3. *c.* 41. Vide *ante*, p. 791. (C.)

County of ——— to wit. } *THE information and complaint of* A. I., *of* ———, *in the said county,* ——— *who informs as well for our lord the king as for himself in this behalf, made before me Sir* G. C. *baronet, one of his majesty's justices of the peace for the said county of* ———, *on the* ——— *day of* ———, *in the* ——— *year of the reign of our said lord the king, who saith that* A. O., *late of* ———, *in the said county, after the making of the statute made in the fiftieth year of the reign of his late majesty king* George *the third, and intituled* " An act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches," *to wit, on the* ——— *day of* ———, *in the said* ——— *year of the reign of our lord the now king at* ———, *in the county of* ——— *aforesaid, then and there being a hawker and trading person going from town to town* [or, *to other men's houses*, as the fact may be], *and travelling on foot*, [or, *with a horse*, or, as the case may be], *in* England, *carrying to sell and exposing to sale goods as a hawker and trading person, did then and there, to wit, on the day and in the year last aforesaid, at* ——— *aforesaid, in the county last aforesaid, as a hawker and trading person going from town to town* [or, *to other men's houses*], *sell, carry to sell, and expose to sale* [or, *carry to sell*, or, *expose to sale*, as the fact may be] *certain goods, wares, and merchandizes, to wit* [here describe the goods], *without having obtained the licence* [or, as the fact may be], *in that behalf directed and required by the statute in that case made and provided, in such manner as therein is directed, contrary to the form of the said statute; whereby and by force of the said statute the said* A. O. *hath forfeited for his said offence the sum of ten pounds; and thereupon the said* A. I., *who informs as well for our said lord the now king as for himself in this behalf, prayeth judgment of me the said justice in the premises.*

A. I.

I receive this information,

G. C.

(D.) Summons on the foregoing Informations. (D.)

County of ——— to wit. } To the constable of the parish of ———, in the said county of ———.

FORASMUCH as A. I. *of* ———, *in the said county,* ——— *did on the* ——— *day of* ———, *in the year of our Lord* ———, *come before me Sir* G. C. *baronet, one of his majesty's justices of the peace of the said county, and make information that* A. O., *late of* ———, *in the said county of* ———, [here state the offence for which the information was laid, and in the words of the information]: *These are therefore to command you, in his said majesty's name, forthwith to summon the said* A. O. *to appear before me at*

———, in the said county, on ———, the ——— day of ———, at the hour of ———, in the forenoon of the same day, to answer unto the said complaint, and further to do and receive what to law doth appertain; and be you then and there to certify what you shall have done in the execution hereof. Herein fail you not.

Given under my hand and seal, the ——— day of ———, in the year of our Lord ———.

G. C. (L. S.)

(E.) (E.) General Form of Conviction on Stat. 50 G. 3. c. 41. Vide ante p. 792.

(F.) (F.) Warrant of Distress.

To the constable of ——— in the said county of ———.

County of ——— } *WHEREAS* A. O. *late of ——— in the said county, ——— was on the ——— day of ——— in the year of our lord ——— at ———, in the said county before me, Sir* G. C. *baronet, one of his majesty's justices residing near to ———, in the said ———, duly convicted of* [here state the offence in the words of the information]. *And whereupon it was then and there adjudged by me the said justice that the said* A. O. *had forfeited for his said offence the sum of ten pounds of lawful money of Great Britain, to be distributed according as the law directs. And whereas the said* A. O., *having had notice of the said conviction, hath refused or neglected to pay, and hath not yet paid the said sum pursuant to the said conviction, and the same hath been fully proved before me: These are therefore to command you to levy the said sum of ten pounds by distress and sale of the goods and chattels of the said* A. O., *or of the goods and chattels with which the said* A. O. *was so found trading as aforesaid. And I do hereby order and direct the goods and chattels, so to be distrained, to be sold and disposed of within ——— days, unless the said sum of ten pounds, for which such distress shall be made, together with the reasonable charge of taking such distress, shall be sooner paid. And you are also hereby commanded to certify to me what you shall do by virtue of this warrant.*

Given under my hand and seal at ———, the ——— day of ——— in the year of our lord ———.

G. C. (L. S.)

(G.) (G.) Commitment thereupon for Non-payment.

To the constable of the parish of ——— in the said county of ——— and to the keeper of the common gaol at ——— in the said county, or his deputy.

County of ——— to wit. } *RECEIVE into your custody the body of* A. O. *late of ——— in the said county, ——— herewith sent you, brought before me Sir* G. C. *baronet, one of his majesty's justices of the peace, in and for the said county, and*

charged before me the said justice upon the oath of A. W. *a credible witness, for that he the said* A. O. [here state the offence in the words of the information] *and upon full consideration had thereon I the said justice have duly convicted him of the said offence and have adjudged him to forfeit and pay for his said offence, the sum of ten pounds of lawful money of Great Britain, which said sum of ten pounds having been demanded of him the said* A. O. *by me the said justice, and he not having forthwith paid the said penalty, and him therefore safely keep in your custody until the said sum of ten pounds shall be levied by distress and sale of the goods and chattels of the said* A. O., *or of the goods and chattels with which he was so as aforesaid found trading, together with the reasonable costs and charges of taking such distress, or until the same forfeiture shall be otherwise paid or satisfied; provided that the time of* such imprisonment shall not exceed the space of three months, *and for so doing this shall be your sufficient warrant.*

Given under my hand and seal, this —— day of ———, in the year of our Lord ———.

N. B. — As most of the proceedings for the recovery of penalties under these laws are conducted by the riding surveyors and other officers of the hawker's department of the hackney coach office, who are generally provided with a small work recently published, under the title of *The Law of Hawkers and Pedlars, by a County Magistrate,* where the precedents are so numerous as to apply to every possible case, it has been thought unnecessary to repeat them in these pages.

Hawks and Hawking. See **Game.**

Hay.

STATS. 2 *W.* 3. *sess.* 2. *c.* 8. and 8 & 9 *W.* 3. *c.* 17. and 31 *G.* 2. *c.* 40., containing regulations concerning the selling of hay, straw, and cattle, within the bills of mortality, are by stat. 36 *G.* 3. *c.* 88. repealed, so far as relates to hay and straw, but are not general enough to be here inserted at large.

Hedge-Breaking. See Vol. V. tits. **Trespass. Wood.**

Hemp and Flax.

[33 H. 8. c. 17.—26 G. 3. c. 43.—27 G. 3. c. 13.]

33 H. 8. c. 17. Watering hemp or flax.

BY stat. 33 *H.* 8. *c.* 17. it shall not be lawful to any person to water any hemp or flax in any river, running water, stream, brook, or other common pond, where beasts used to be watered; on pain that every person offending shall forfeit 20*s.*, half to the

king, and half to the party grieved, or any other who shall sue in any court of record, leet, or law day.

26 G.3. c.43. 27 G.3. c.13. Bounty for the encouragement of the growth of hemp and flax.

By stat. 26 *G.* 3. *c.* 43. for the encouragement of the growth of hemp and flax in *England* yearly, a sum not exceeding (6335*l.* 15*s.* 27 *G.* 3. *c.* 13. § 65.) at the rate of 3*d. per* stone of hemp, and 4*d. per* stone of flax, was directed to be raised in the year 1787, and for every subsequent year, to be paid to the grower, or other person who breaks or properly prepares the same for market. And certain regulations relative thereto were placed under the cognizance of the justices at sessions. But the act was to continue in force for seven years only; and from thence to the end of the next session of parliament.

Herring Fishery. See Fisheries.

Hides and Skins. See Leather.

High Constable. See Constable.

High Treason. See Treason.

Highways in general.

NOTE; bridges repaired by the parish or township, and which consequently come under the cognizance of the surveyor of the highways, are comprehended under this title: county bridges are treated of under title Bridges, Vol. I.

For regulating the streets of the metropolis, and places within the vicinity. See stat. 57 *G.* 3. *c.* xxix. (*Local.*)

I. Concerning the highways in general.

II. Concerning turnpike roads in particular.

I. Concerning the highways in general.

Sect. I. *What is a highway.*

II. *Of the special sessions to be holden for the highways.* [13 G. 3. c. 78.—55 G. 3. c. 68.]

III. *Appointment of Surveyors.* [13 G. 3. c. 78.]

IV. *Who are liable to repair, and in what proportion.*

1. *Of the parish.* [34 G. 3. c. 64.]

2. *Of individuals bound in respect of inclosures.*

3. *Of prescription.*

4. *Of repairs by private persons.*
[13 G. 3. c. 78.]

5. *Of the proportion.*
[13 G. 3. c. 78.—34 G. 3. c. 74.—42 G. 3. c. 90.]

V. *Composition instead of statute duty.*
[13 G. 3. c. 78. — 34 G. 3. c. 74. — 44 G. 3. c. 52. — 54 G. 3. c. 109.]

VI. *Working.*
[13 G. 3. c. 78.—34 G. 3. c. 74.—54 G. 3. c. 109.]

VII. *Materials how to be procured.*
[13 G. 3. c. 78.]

VIII. *Removing obstructions and annoyances; carts, &c. Drivers misbehaving.*
[1 G. 1. st. 2. c. 57. — 24 G. 2. c. 43. — 30 G. 2. c. 22. 13 G. 3. c. 78.]

IX. *Direction posts, blocks, milestones, watermarks, and battlements of bridges.*
[13 G. 3. c. 78.]

X. *Breadth of wheels, and number of horses.*
[6 G. 1. c. 6.—18 G. 2. c. 33.—13 G. 3. c. 78.]

XI. *Breadth, widening, changing, and diverting highways.*
[8 & 9 W. 3. c. 16.—13 G. 3. c. 78.—55 G. 3. c. 68.]

XII. *Assessments how to be made.*
[13 G. 3. c. 78.—54 G. 3. c. 109.]

XIII. *Penalty of hindering the execution.*
[13 G. 3. c. 78.]

XIV. *Penalty of the surveyor for neglect of duty.*
[13 G. 3. c. 78.]

XV. *Surveyors account.*
[13 G. 3. c. 78.]

XVI. *Presentment or indictment of highways in general.*
[13 G. 3. c. 78.]

XVII. *Presentment by a justice.*
[13 G. 3. c. 78.]

XVIII. *Levying of assessments, fines and forfeitures.*
[13 G. 3. c. 78.]

XIX. *Appeal.*
[13 G. 3. c. 78.]

XX. *Limitation of actions.*
[13 G. 3. c. 78.]

§ I. What is a Highway.

Three kinds of highways.

There are three kinds of ways; (1.) A footway (*a*); (2.) A foot and horse way, which is also a pack or drift way; (3.) A foot, horse, and cart way. 1 *Inst.* 56.

Difference between a highway and a private way.

It seemeth that any one of the said ways, which is common to all the king's people, whether it lead directly to a market town, or only from town to town, and do not terminate there, but is also a thoroughfare to other towns, may properly be called a highway. 1 *Haw. c.* 76. § 1.

For there were highways before there were market towns. And if it were essential to the constituting of a highway that it should expressly lead from market town to market town, then it would follow that the lord of a market, by forfeiting or surrendering his charter, might cause that to cease to be a highway which was a highway before; or the king, by granting a market in any place where there was no market before, might thereby consequently change the way to it from a private way into a highway.

And therefore, the distinction which is taken in some books concerning this matter, seems to be very reasonable; that every way from town to town may be called a highway, because it is common to all the king's subjects; and consequently that a nuisance therein is a common nuisance, and punishable by indictment; but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of whom, as it seems, may have an action on the case for a nuisance therein. 1 *Haw. c.* 76. § 1. 1 *Russ.* 448.

Nuisance in and repairs of private ways.

So, if I have a private way without a gate, and a gate is hung up, an action lies upon the case, for I have not my way as I had before. *Litt. R.* 267.

So if one grant me a way, and afterwards dig trenches in it to my hinderance, I may fill them up again. *God.* 53.

But if a way which a man has, become not passable, or become very bad, by the owner of the land tearing it up with his carts, and so the same be filled with water, yet he who has the way cannot dig the ground to let out the water, for he has no interest in the soil. But in such case he may bring his action against the owner of the land for spoiling the way, or perhaps he may go out of the way, upon the land of the wrong doer, as near to the bad way as he can. *God.* 52.

Where a prescription way is out of repair, the passengers have no right to go upon the adjacent ground.

Taylor v. *Whitehead, Doug.* 745. This was an action of trespass for breaking and entering the plaintiff's close. The defendant (*inter alia*) pleaded a right of way by prescription, through a lane of the plaintiff's contiguous to the place in question, to

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(*a*) There is no doubt that a public *footway* or *bridleway* is a highway.— *Vide Allen* v. *Ormond*, 8 *East*, 4. It is a highway for foot passengers, or for horse passengers, &c. and the parish is bound to repair it till they can throw the onus upon others. *Per* Ld. *Ellenborough*, C. J. *R.* v. *Inh. Com. Salop*, 13 *East*, 97.

Otley-bridge on the river *Wharfe*, in *Yorkshire*, and *that the tenants and occupiers of those lands were from time whereof, &c. by reason of their tenure bound to repair the lane, and the banks thereof next to the river;* that at several times the lane was out of repair and overflowed with water, so that the defendant could not use the way without imminent danger of the loss of his life and goods; and that he necessarily went over the lands adjoining as near to the said way as he possibly could, as it was lawful for him to do, &c.——This cause was tried before Ld. *Loughborough* at *York* in 1780, and afterwards argued in the court of K. B.—By Ld. *Mansfield* Ch. J. The question is upon the grant of this way. Now it is not laid to be a grant of a way generally over the land; but of a precise specific way. The grantor says, you may go in this particular line; but I do not give you a right to go either on the right or left. I entirely agree with my brother *Walker*, that by common law "he who hath the use of any thing ought to repair it." The grantor *may* bind himself, but here he has not done it. He has not undertaken to provide against the overflowing of the river; and for aught that appears, *that* may have happened by the neglect of the defendant. Highways are governed by a different principle. They are for the public service, and if the usual tract be impassable, it is for the general good that people should be entitled to pass in another line. See also *Bullard* v. *Harrison*, 4 *M.* & *S.* 387.

Otherwise as to highways.

And this was clear law established by a number of cases, particularly that of *Absor* v. *French*, *B. R. M.* 30 *Car.* 2. 2 *Show.* 21. *S. C. Lev.* 234. and *Hend's* case, Sir *W. Jones*, 296. that where a common highway is out of repair by the overflowing of a river or any other cause, passengers have a right to go upon the adjacent ground. So if the water impair the banks of a navigable river, (which is indeed considered as a highway), it is justifiable to go upon the nearest part of the field next adjoining. 1 *Ld. Raym.* 725.

How far outlets are part of the highway.

It hath been holden that if there be a highway in an open field, and the people have used time out of mind, when the ways are bad, to go by outlets on the land adjoining, such outlets are parcel of the way; for the king's subjects ought to have a good passage, and the good passage is the way, and not only the beaten track; from whence it follows, that if such outlets be sown with corn, and the beaten track be foundrous, the king's subjects may justify going upon the corn. 1 *Haw. c.* 76. § 2.

Waste lands adjoining to highways.

Waste lands adjoining to public highways are presumed, in the first instance, to belong to the owner of the adjoining land, and not to the lord of the manor, but that presumption prevails only so long as proof to the contrary is wanting. *Steel* v. *Prickett*, 2 *Stark. N. P.* 463.

Where strips of land lie between a highway and an adjoining inclosure, the *primâ facie* presumption is, that such strips of land, as well as the soil of the highway *ad medium filum viæ*, are the property of the owner of the inclosure; but the presumption is to be confined to that extent, for if the narrow strip be contiguous to, or communicate with open commons or larger portions of land, the presumption is either done away or considerably narrowed, for the evidence of ownership which applies to the larger por-

tions, applies also to the narrow strip which communicates with them. *Grose* v. *West and others*, 7 *Taunt.* 39.

How far a river may be a highway.

In books of the best authority a river common to all men is called a highway. 1 *Haw. c.* 76. § 1.

To whom the freehold of a highway belongeth.

The freehold of the highway is in him that hath the freehold of the soil; but the free passage is for all the king's liege people. 2 *Inst.* 705. And see Sir *John Lade* v. *Shepherd, infra.*

The king has nothing but the passage for himself and his people, for the freehold and all profits belong to the owner of the soil, and all the trees upon it and mines under it, which may be extremely valuable. 1 *Burr.* 143.

What is a dedication to the public.

Sir *John Lade* v. *Shepherd*, 2 *Str.* 1004. Upon trial of an action of trespass, a case was made, that the place where the supposed trespass was committed was formerly the property of the plaintiff, who some years since built a street upon it, which has ever since been used as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof rested on the highway. It was insisted for the defendant that by the plaintiff's making it a street, it was a dedication of it to the public; and therefore, however he might be liable to an indictment for a nuisance, yet the plaintiff could not sue him as for a trespass on his private property.—But by the court: It is certainly a dedication to the public, so far as the public has occasion for it, which is only for a right of passage; but it never was understood to be a transfer of the absolute property in the soil. So the plaintiff had judgment.

Where the owners of the soil suffered the public to have the free passage of a street in *London*, though not a thoroughfare, for eight years without any impediment (such as a bar set across the street, and shut at pleasure,) which would show the limited right of the public,) it was held a sufficient time for presuming a dedication of the way to the public. And though, if the land had been under lease during that time, or even for a much longer period, the acquiescence of the tenant would not, it seems, have bound the landlord, without evidence of his knowledge. *Trustees of the Rugby Charity* v. *Merryweather*, 11 *East*, 375, *in the note.*—*Et vide per Mansfield, C. J.* 5 *Taunt.* 142.

Yet it has been held that where a way has been used by the public for a great number of years over a close in the hands of a succession of tenants, the privity of the landlord, and a dedication by him to the public, may be presumed, although he was never in the actual possession of the close himself, and he is not proved to have been near the spot. *R.* v. *Barr*, 4 *Campb.* 16.

And in this case it was also held, that where a way has been so used, notice of the fact to the steward is notice to the landlord. *S. C.*

In *R.* v. *Lloyd*, 1 *Campb.* 260., which was an indictment for obstructing a highway, it was said by Lord *Ellenborough* C. J., that although a place be not a thoroughfare, yet if the owner of the soil throw open a passage, and neither marks by any visible distinction that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public, and *that,* although the passage were originally intended for private conve-

nience, when the public have been long allowed to use it without interruption.

In *Lethbridge* v. *Winter*, *Somerset* Spring assizes, 1808. 1 *Campb.* 263. (n.) Trespass was brought for entering plaintiff's close and pulling down a gate.—Plea, that it was a public footway, and the gate wrongfully erected across the same.—Evidence, that the gate had been recently put up in a place where a similar gate had formerly stood, but where for the last twelve years there had been none. It was contended for the defendant, that from suffering a gate to be down so long, and permitting the public to use the way without obstruction for so many years, the plaintiff and those under whom he claimed must be considered as having completely dedicated the way to the public, and that the gate could not be replaced. Under the direction of the judge, a verdict was found for the plaintiff, and the court of K. B. refused a rule *nisi* to set it aside.

And in *Roberts* v. *Karr*, *Kingston Lent* assizes 1808, 1 *Campb.* 262. (n.) *Heath*, J. also decided the same point, *viz.* that the originally establishing a bar or obstruction rebuts the presumption of a dedication to the public, though it may have been down for some time.

He also said that there could not be a partial dedication to the public. 1 *Russ.* 451.

It seems also, that in every case the facts must be considered as sufficient to shew that the owner meant to give the public a right of way over his soil, before a dedication by him will be presumed. Thus, in *Woodyer and another* v. *Haddon*, 5 *Taunt.* 125. when the plaintiff erected a street, leading out of a highway across his own close, and terminating at the edge of the defendant's adjoining close, which was separated by the defendant's fence from the end of the street for twenty-one years, during nineteen of which the houses were completed, and the street publicly watched, cleansed and lighted, and both footways and half the horseway paved, at the expence of the inhabitants, it was held (*dissentiente Chambre, J.*), that this street was not so dedicated to the public that the defendant, pulling down his wall, might enter it at the end adjoining to his land, and use it as a highway.

Dedication to the public. In trespass and justification under a public right of way, the *locus in quo*, which was not a thoroughfare, had been under lease from 1719 to 1818, but as far back as living memory could go, it had been used by the public, and lighted, paved, and watched under an act of

Wood v. *Veal*, *H.* 2 *G.* 4. 5 *B.* & *A.* 454. Trespass for breaking and entering a certain yard and close of the plaintiff, in the parish of *St. John*, *Westminster*, and pulling down his fence, &c. there erected. The defendant justified the trespass under a public right of way. At the trial at the *Westminster* sittings, after last *Mich.* term before *Abbott* C. J., it appeared that the *locus in quo*, which was called *Little Abingdon-street*, *Westminster*, was not a thoroughfare, but that as far back as living memory could go, it had been used by all persons desirous of going there, and that in 11 *G.* 3. it had been enumerated amongst other streets in the act of parliament then passed for paving, cleaning, and lighting the squares, streets, &c. of *Westminster*. That the commissioners had accordingly paved and lighted it, and that watchmen had been stationed there, &c. On the part of the plaintiff, it appeared that in the year 1719 a lease for 99 years of the plaintiff's premises, including the yard in dispute, had been granted by the then owner of the fee; which having expired in 1818, the plain-

Wood v. Veal.

parliament, in which it was enumerated as one of the streets in *Westminster*. After 1818, the plaintiff, who previously lived for 24 years in its neighbourhood, inclosed it: Held, that under these circumstances, the jury were well justified in finding that there was no public right of way, inasmuch as there could be no dedication to the public by the tenants for 99 years, nor by any one except the owner of the fee.

Quære, whether there can be a public highway which is not a thoroughfare?

tiff, in 1820, having for 24 years previously lived in the neighbourhood, erected the fence in question. The Lord Chief Justice left it to the jury to say, whether they thought there had been any dedication to the public previously to 1719, telling them, that in that case they ought to find for the defendant; but if not, then he told them, that there could be no dedication to the public, except by the owner of the fee; and that the permission by the tenants for 99 years would not bind the landlord; and that the circumstance of the lease for 99 years, which had been proved, explained, in a great degree, the use by the public, as not being referable to a dedication by the landlord. Under this direction, the jury found a verdict for the plaintiff. — On motion for a new trial, *Abbott* C. J. said, I have great difficulty in conceiving that there can be a public highway which is not a *thoroughfare*, because the public at large cannot well be in the use of it. In this case, however, I left it to the jury to consider, whether there had been a dedication to the public, telling them that a highway might exist, although it was not a thoroughfare. Nothing done by the lessee without the consent of the owner of the fee would give the right of way to the public. Here, as the land was demised by the lease of 1719, which expired in 1818, it seems to me, that the proper question to consider was, whether there had been a dedication to the public before 1719, or, subsequently to that period, with the consent of the owner of the fee. I am still of opinion that the case was presented properly to the consideration of the jury, and I think they have found a right verdict. — *Bayley* J. It is not necessary to decide upon the present occasion, whether there can be a highway which is not a thoroughfare. For the point in this case is, whether, supposing that to be so, there has been a dedication of this way to the public. Now, in order to give the public that right, it must be done with the consent of the owner of the fee; for where it is given by an individual having a limited right, it can only continue for a limited period. Here, upon the evidence, it appears that the permission was given, if at all, by the lessee for 99 years. I think, therefore, that the case was properly left to the jury, and that they have found a proper verdict. — *Holroyd* J. The opinion of Lord *Kenyon* in the *Rugby Charity* v. *Merryweather*, 11 *East*, 375. (*n*) (*ante*, p. 810.) is somewhat shaken by the observations of Ld. C. J. *Mansfield* in *Woodyer* v. *Hadden*, 5 *Taunt*. 142. (*ante*, p. 811.) But it is not necessary to determine that question here, for this case has been determined upon principles which assume the case of the *Rugby Charity* v. *Merryweather* to be good law. — *Best* J. I am quite satisfied with the verdict which the jury have found in this case, and with the manner in which the question was left to them. No man has a greater respect for the learned judge who decided the case of the *Rugby Charity* v. *Merryweather* than I have, but I think that that decision was a departure from principles usually received in the law. If a road be for the accommodation of particular persons only, it is not a public road; and, therefore, I can see no reason why the inhabitants in a street which is not a thoroughfare should not put up a fence at the end of it and exclude the public. It is not, however, necessary to decide that question in this case, because, independently of it, the plaintiff was entitled to the verdict. R.R.

Rex v. Inh. of St. Benedict, Cambridge.

Where a road was set out by the commissioners under a local act, and certain persons only were by the act to use it, but in fact it had been used by the public for many years, it was held that this was not sufficient evidence of a dedication to the public; and that if it was, there being no evidence that the parish had acquiesced in that dedication, it was not a public road which the parish were bound to repair.

Rex v. *The Inhab. of the Parish of St. Benedict, in the Town and County of Cambridge, E.* 2 *G.* 4. 4 *B. & A.* 447. Presentment in the usual form, by a magistrate against the defendants, for not repairing a highway. Plea, not guilty. The case was tried at the *Cambridge* Lent assizes, 1820, before *Graham* B., when a verdict was found for the crown, subject to the opinion of the Court of K. B. on the following case: The road, which was proved to be out of repair, was situate in the defendants' parish, and was originally made under the provisions of a local act passed in the 41 *G.* 3. By a clause in that act the commissioners were directed to set out two specific private roads, therein particularly described, which, when set out, were to be used by such persons only as were entitled to use an old occupation-road, running in the same direction with the latter of the two roads. The commissioners acting in execution of this power, by their award, dated *June* 27, 1803, set out the road presented as one of these two roads. From the date of the award, however, until the finding of the presentment, the road had been used by the public without interruption as a carriage-way. The question was, whether under these circumstances this was a public road which the parish was bound to repair? After argument, in which the cases of *The Trustees of the Rugby Charity* v. *Merryweather*, (11 *East*, 375.) *The King* v. *The West Riding of Yorkshire*, (2 *East*, 342.) *and Rex* v. *Lloyd*, (1 *Camp.* 260.) were cited, *Abbott* C. J. said, I am of opinion that this was not a public road, and that the parish are not bound to repair it. It was in this case, as appears from the clause in the local act, compulsory on the owner of the soil to permit a qualified passage, viz. to all persons entitled to use the old occupation-road. That circumstance distinguishes this from the cases cited. If this be a public road, it would follow that wherever, under an inclosure act, an occupation-road was set out, and it happened to be convenient for passage, it would become, almost immediately, a public road, and the burden of repairing it would be thrown on the parish.—*Bayley* J. I do not accede to the doctrine, that because there is a dedication of the road by the owner of the soil, and the public use it, that the parish is therefore bound to repair. I think there ought to be, in addition to that, evidence of an acquiescence by the parish in that dedication. In the case of bridges, there always is what is to be considered as an acquiescence by the county. The county is not liable except for bridges made in *highways;* the making of the bridge, and thereby obstructing the road while the bridge is making, may be treated as a nuisance, and the county may, if it think fit, stop its progress by indictment, and the forbearing to prosecute in that way is an acquiescence by the county in the building of the bridge. But in the case of a parish, they have no power to prevent the opening of a road, or to obstruct the public use of it. It would be most unjust if, by the public use of what was at first a private road, the burden of repairing it could be removed from the persons to whom the use of it was at first confined, and cast upon the parish. Admitting, therefore, that in this case there was a dedication to the public (which, I think, does not sufficiently appear), and the road was found to be a public benefit, (which I am not sure is the case,) I think that in consequence of the want of some act of acquiescence or adoption by the parish,

they are not liable to the repair of this road. *Holroyd* and *Best* Js. concurred. Judgment for the defendants.

§ II. Of the special Sessions to be holden for the Highways.

[13 G. 3. c. 78. § 1. 61.—55 G. 3. c. 68. § 6.]

13 G.3. c.78. By stat. 13 *G.* 3. *c.* 78. § 1. the justices shall hold a special sessions for the highways in the week next after the *Michaelmas* general quarter sessions yearly.

55 G.3. c.68. By stat. 55 *G.* 3. *c.* 68. § 6. after reciting, that whereas by an act passed in the 54th year of his present majesty, intituled *An act to amend an act of the thirteenth year of his present majesty,* (54 G.3. c.109.) it is among other things enacted, that two or more justices of the peace, at their special sessions to be holden in the week next after *Michaelmas* yearly, shall fix such rates, as they shall adjudge reasonable, as a composition in lieu of teams, carts, horses, oxen, or labour: and whereas certain other matters relative to the highways are directed to be done by justices of the peace, at their special sessions to be holden in the week next after the *Michaelmas* quarter sessions: and whereas the time for holding the *Michaelmas* quarter sessions has been altered by an act made in the 54th year of his present majesty, intituled *An act for regulating the time of holding the* Michaelmas *quarter sessions;* (54 G.3. c.84.) it is therefore enacted, that it shall and may be lawful for the justices of the peace, assembled in their special sessions in the week after *Michaelmas,* to do and perform every act which they might heretofore legally have done in the special sessions directed to be holden in the week after the said *Michaelmas* general quarter sessions of the peace. (Justices to act in Michaelmas special sessions.)

13 G.3. c.78. By stat. 13 *G.* 3. *c.* 78. § 61. It shall be lawful for any two or more justices of the peace within their respective limits, and they are hereby empowered, from time to time, whenever they shall judge proper, to hold any special sessions, besides that which is herein-before directed, for executing the purposes of this act; and to adjourn the same from time to time, as they shall think fit, causing notice (No. I.) to be given of the time and place of holding such special sessions, and of the adjournments thereof, to the several justices acting and residing within such limits, by the high constable, or other proper officer within the same. (Justices may hold and adjourn special sessions whenever they think fit, upon giving notice to the other justices. (No. I.))

This section is applicable to an order of justices for diverting and turning a road made under the authority of stat. 55 *G.* 3. *c.* 68. § 2. *R.* v. *Justices of Worcestershire,* 2 *B.* & *A.* 228.

Special session, what. A special sessions here means a sitting convened by notices to the other magistrates of the division. *Per Bayley* J., *S. C.*

§ III. Appointment of Surveyors.

[13 G. 3. c. 78. § 1, 2, 3, 4, 5. 48. 53, 54. 70.]

13 G.3. c.78. By stat. 13 *G.* 3. *c.* 78. § 1. Upon the 22d day of *September,* in every year, unless that day shall be *Sunday,* and then on the day following, the constables, headboroughs, tithingmen, churchwardens, surveyor of the highways, and householders, (No. I.) (On Sept. 22. yearly, a list is to be made of)

13 G.3. c.78.

being assessed to any parochial or public rate of every parish, township, or place, shall assemble together at the church or chapel of such parish, township, or place, or if there shall be no church or chapel, then at the usual place of public meetings for such parish, township, or place, at the hour of eleven in the forenoon; and the major part of them, so assembled, shall make a list (No. II.) of the names of at least ten persons living within such respective parishes, townships, or places, who each of them have an estate in lands, tenements, or hereditaments, lying within such respective parish, township, or place, in their own right, or in the right of their wives, of the value of 10*l.* by the year; or a personal estate of the value of 100*l.*; or are occupiers or tenants of houses, lands, tenements, or hereditaments, of the yearly value of 30*l.*: and if there shall not be ten persons having such qualifications as aforesaid, then they shall insert in such list the names of so many of such persons as are so qualified, as above required, together with the names of so many of the most sufficient and able inhabitants of such parish, township, or place, not so qualified, as shall make up the number ten, if so many can be found; if not, so many as shall be there resident, to serve the office of surveyor of the highways: and the constable, headborough, or tithingman, of such parish, township, or place, shall, within three days after such meeting, transmit a duplicate of such list to one of the justices of the peace within the limit of the county, riding, division, hundred, city, corporation, precinct, or liberty, where such parish, township, or place shall lie, living in or near the same; and shall also return and deliver the original list, (No. II.) made and agreed upon at such meeting, to the justices of the peace, at their special sessions to be held for the highways within that limit, in the week next after the *Michaelmas* general quarter sessions of the peace in every year; and shall also, within three days after making the said list, give personal notices to, or cause notices in writing (No. III.) to be left at the places of abode of the several persons contained in such list, informing them of their being so named, to the intent that they may severally appear before the justices, at the said special sessions, to accept such office, if they shall be appointed thereto, or to shew cause, if they have any, against their being appointed: and the said justices are hereby authorised and required to hold such special sessions at such convenient place or places, within their respective limits, as they, in their discretion, shall judge proper; and to give notice (No. I.) of the time and place where they intend to hold the same to the constables, headboroughs, or tithingmen, of every such parish, township, or place, at least ten days before the holding of the said session; and the said justices, then and there (*a*), from the said lists, according to

At least ten persons, by the constables, &c. at the usual place of public meetings. (No. II.)

Qualification of surveyors.

A duplicate of such list shall be transmitted to one of the justices, and the original list to the special sessions, by the constable, &c. (No. II.)

Vide *ante*, Notices to the persons contained in the list. (No. III.)

The justices are to give 10 days' notice of holding special (No. I.) sessions to the constables, &c. and may appoint from the

(*a*) If the magistrates, upon proper lists returned to them, omit to appoint a surveyor of the highways, at their first special sessions as directed by this act, they are bound to make such appointment at a subsequent special sessions. For *per* Ld. *Ellenborough* C. J., this part of the act is only directory to the magistrates to make the appointment at the time mentioned: but there are no negative words to prevent them from exercising their office in that respect at any subsequent time, if it shall be necessary. And common sense requires that if the appointment be not made at the first special sessions, it should be made afterwards. *Rex* v. *Just.* of *Denbighshire*, 4 *East*, 142.

If the magistrates omit to appoint a surveyor at their special sessions as directed by 13 G.3. c.78. § 1. they are bound to appoint at a subsequent special sessions.

13 G.3. c.78.

(No. VI.) list such number of surveyors as they shall judge fit, if they shall, in the opinion of the justices, be qualified for the office; if not, other inhabitants or occupiers, &c. which appointment shall be notified to the persons named by the constables, &c., and the surveyor shall hold his office for one year. Justices to give a charge for the performance of surveyor's duty. Persons appointed from the list refusing to serve, shall forfeit 5l.; and those not in the list, on refusal, shall forfeit 50s. No person who hath served one year is to be again appointed for the same place within 3 years after, without his consent. If no such list be made, or

their discretion (*a*), and the largeness of the parish, township, or place respectively, by warrant (No. VI.) under their hands and seals, shall appoint one, two, or more of such persons as aforesaid, if he or they shall, in the opinion of such justices, be qualified for the office of surveyor; if not, one, two, or more of the other substantial inhabitants or occupiers of lands, tenements, woods, tithes, or hereditaments within such parish, township, or place, living within three miles thereof, and within the same county, fit and proper to serve the office of surveyor of the highways for such parish, township, or place, if any such can be found; which appointment shall by the constables, headboroughs, or tithingmen aforesaid, be notified to every person so appointed by the said justices, within three days after such appointment, by serving him with the said warrant, or by leaving the same, or a true copy thereof, at his house or usual place of abode; and every person so appointed, if he accepts the said office, shall be surveyor of the highways for the said parish, township, or place, for the year ensuing, and shall take upon him, and duly execute, the office aforesaid; and the said justices shall then and there give such of the said surveyors as shall personally appear before them, a charge for the better performance of their duty, according to the directions of this act: and if any of the said persons, so appointed, whose names were contained in such list, and who were served with the said notice, shall refuse or neglect to appear at the said special sessions, and accept the said office, if appointed thereto, in manner aforesaid, or shall not, within six days after being served with such warrant of appointment, signify his acceptance thereof, either in person or by writing, to one of the said justices, he shall forfeit the sum of 5*l.*; and in case any person so appointed by the said justices, whose name was not contained in such list, shall refuse or neglect to accept the said office, or shall not, within six days after being served with such appointment, shew to one of the justices signing such appointment sufficient cause why he should not serve such office, he shall forfeit the sum of 50*s.*: provided that no person who hath been appointed and served the office of surveyor for one year, shall be liable to be appointed surveyor for the same parish, township, or place, within three years from the time of such first appointment and service, unless he shall consent thereto; but if no such list shall be made and returned, or if the said justices shall make such appointment as aforesaid, and the person or persons so appointed shall refuse to serve the said office, the said justices, or any two of them, shall and may, and are hereby

The magistrates are not bound to appoint surveyors from the list returned them.

(*a*) In *R.* v. *Baldwin* and others, 7 *T. R.* 169., a rule was moved for, to shew cause why a *mandamus* should not issue to the defendants and the other justices of *Surrey*, commanding them to appoint one or more persons *named in the list of* 21 persons returned to them as directed by stat. 13 *G.*3. *c.*78. (*supra*) to be surveyors of the highways of the parish of *Battersea*. In fact, the defendants had appointed two of the persons named in the list, but they had also appointed a third surveyor not in the list. — Ld. *Kenyon* C. J. By the first section in the act of parliament, if the list of persons returned to the justices does not contain the names of persons whom the justices think qualified, they may appoint any other persons of the parish who are properly qualified. If indeed the magistrates act corruptly, they may be punished for an abuse of their discretionary power; but no corruption is even suggested in this case. The lists are directed by the act only for the purpose of assisting the magistrates, who in many instances might not perhaps know a sufficient number of persons fit for the office. Rule discharged.

required, at the said special sessions, or at some subsequent special sessions, to be held within one month after, to nominate and appoint some other person or persons to be surveyor of such parish, township, or place, whom they shall judge proper to execute that office, and shall and may fix such salary to be paid to such surveyor, to be appointed as herein last before mentioned, out of the said forfeitures, and all other forfeitures, fines, penalties, assessments, and compositions, to be paid, levied, and raised, under the authority of this act, within such parish, township, or place respectively, as such justices shall think fit, not exceeding one eighth part of what shall have been raised by an assessment of 6*d.* in the pound, for the use of the highways within such parish, township, or place, where any such assessment shall have been raised, and observing the same restriction, as near as they can, from the best information they shall be able to get of the probable amount of such an assessment, where none hath been already made; and the said justices shall and may, if they think fit, require (No. IV.) the constables, headboroughs, tithingmen, and surveyor, of every such parish, township, and place, or any of them, to return to them at such time and place as they shall appoint, an account, in writing, (No. V.) of the sum which such assessment of 6*d.* in the pound hath raised, or will, in his or their opinion, raise within such parish, township, or place: and if the constables, headboroughs, tithingmen, churchwardens, surveyors of the highway, and such householders as aforesaid, of any parish, township, or place, shall neglect or refuse to make such list as aforesaid; or if the constable, headborough, or tithingman of any parish, township or place shall not return the said list of names, when made, and such duplicate thereof as aforesaid, and give such notice or notices, and serve such warrant or warrants, as in this act is directed; or if the said constable, headborough, tithingman, and surveyor, or any of them, shall neglect to return such account of the amount of such assessment, as aforesaid, when so required as aforesaid; every constable, headborough, tithingman, churchwarden, or surveyor, so neglecting or refusing, in any of the said cases, shall, for every such default respectively, forfeit the sum of 40*s.*

13 G.3. c.78.

or the person appointed refuses to serve, another person may be appointed, at a subsequent special sessions, and a salary fixed, not exceeding one 8th part of 6*d.* assessment.

(No. IV.) Justices may require the constables, &c. to return an account in writ- (No. V.) ing of the sum which the assessment of 6*d.* per pound will raise.

40*s.* penalty on the constables, &c. not making or returning such lists, or not giving the notices required,

§ 53. The justices of the peace of all cities, corporations, boroughs, and other places, are hereby required to put in execution every part of this act within their respective jurisdictions.

§ 54. Provided that nothing in this act contained shall impower any justice or justices of the peace, for any city, town corporate, or borough, to fix or allow any salary to or for any surveyor to be appointed by any such justice or justices, other than and except such salary as shall be settled and agreed upon by two parts out of three of the persons assembled in the parish, township, or place, within such city, town corporate, or borough, for which such surveyor shall be appointed, pursuant to the directions of this act.

Justices of cities or boroughs not to allow salaries to surveyors, except such as shall be agreed upon at the meeting of the householders.

§ 2. In all cases where the said justices, upon neglect or refusal of the person so nominated surveyor as aforesaid to accept the said office, shall appoint any other person for such surveyor, with a salary as aforesaid, the said justices shall and are hereby required to appoint one substantial inhabitant of such parish, township, or place, for assistant (No. VIII.) to such surveyor, in the several matters, and for the several purposes hereafter mentioned, until the next annual appointment of surveyors, according

Where the justices, upon such refusal, shall appoint another person, they are to appoint one (No. VIII.) substantial inhabitant for his

13 G.3. c.73.

assistant; who, on refusal to accept that office, shall forfeit 50s. and the justices may appoint another, who, on refusal, shall also forfeit 50s., they may then appoint a third person, who shall be entitled to the said forfeitures, and to a further allowance, by way of salary, if the justices think necessary.

to the directions of this act; and if the person so appointed assistant shall, upon notice of such appointment, refuse to accept that office, he shall forfeit the sum of 50*s.*: and, in that case, it shall and may be lawful for such justices to appoint any other substantial inhabitant of such parish, township, or place, for assistant to such surveyor, in manner and for the time aforesaid; and if such second appointed assistant shall decline or refuse to accept the said office, he shall, in like manner, forfeit the sum of 50*s.*; and the said justices shall and may appoint any other person, inhabiting in such parish, township, or place, assistant to such surveyor, who shall be intitled to the said forfeitures herein last before mentioned; and also to some further allowance by way of salary, (to be paid as the surveyor's salary is hereby directed to be paid), if the said justices shall think any such salary necessary, and shall order the same, which they are hereby authorised to do: provided that no person so appointed assistant for one year shall be liable to be appointed assistant for the same parish, township, or place, within three years next following such first appointment, without his consent.

Bond to be given by the surveyor appointed with a salary, to account for the money which shall come to his hands. (No. VII.)

§ 3. The surveyor of every parish, township, and place, who shall not reside therein, but shall be appointed with such salary as aforesaid, shall, if required by the churchwarden, overseer of the poor, or any principal inhabitant of the parish, township, or place, for which he shall be so appointed surveyor, at the time of his appointment, or within fourteen days after, give a bond (*a*) (No. VII.) upon paper, without stamp thereupon, to some proper person within such parish, township, or place, to be nominated by the said justices, with sufficient surety, to account for the money which shall come to his hands as surveyor, according to the directions of this act.

Duty of the assistant surveyor.

§ 4. The assistant, so to be nominated and appointed, shall, and is hereby required, to the best of his skill and judgment, to assist the said surveyor, whenever requested by him, in calling in and attending the performance of the statute duty; in collecting the compositions, fines, penalties, and forfeitures; in making and collecting the assessment; in making out and serving the notices authorised by this act; and in such other matters and things as shall be reasonably required of him by the surveyor, in the execution of his office as surveyor, pursuant to this act. And the said assistant shall justly and truly account with, and pay to, the said surveyor, or to his order, from time to time, according to the directions of this act, all the money which shall come to his hands as assistant, by the means as aforesaid; and in default thereof, he shall forfeit double the value of the money by him so received, and not so paid and accounted for; and if the said assistant shall wilfully neglect or make default in the performance of any of the duty required from him by this act, he shall forfeit, for every such offence, any sum not exceeding 5*l.*, nor less than 40*s.*, at the discretion of the justice or justices of the limit within which such assistant shall be appointed: And the said surveyor shall, and is hereby required to send orders, in writing, upon the said assistant, for the payment of all sums due to any person or persons, for work or materials, by virtue of this act, which amount to 40*s.*, or

Forfeitures for neglect of his duty.

Surveyors to send orders upon the assistant for payment of all

(*a*) For which the justices' clerk shall have sixpence, and no more. 13 *G.3.* c.78. § 48.

upwards; and the said surveyor shall not be responsible for any sum or sums of money which shall be received by the said assistant, and shall not be actually paid to such surveyor, or to his order.

13 G. 3. c. 78.

sums amounting to 40s. or upwards.

§ 5. If two parts out of three of those so to be assembled in any such parish, township, or place, for the nomination of surveyors, as aforesaid, shall agree in the choice of any particular person of skill and experience, to serve the said office of surveyor for such parish, township, or place, and in the settling of a certain salary for his trouble therein, and shall return the name of such person, together with the list (No. II.) hereinbefore directed, to the justices of the peace, at their said sessions, to be held in the week next after the *Michaelmas* quarter sessions; that then, and in every such case, it shall and may be lawful for the said justices, if they shall think proper, to appoint such person to be surveyor for such parish, township, or place, and allow him the salary mentioned in such agreement, which shall be raised and paid in the same manner as the salary hereinbefore mentioned is directed to be raised and paid; and in case any surveyor to be appointed under the authority of this act shall die, or become incapable of executing that office, before such next special sessions for appointing surveyors, the said justices, or any two of them, shall and may, at some special sessions, nominate and appoint such person or persons as they shall think proper, to execute the said office, until such next special sessions for appointing surveyors, as aforesaid; and, if such deceased surveyor had a salary, they may allow the same salary to his successor, in proportion to the time he shall serve the said office; and if the said justices of the peace, at their said special sessions, or at any time afterwards, pursuant to the powers of this act, shall appoint more than one person for surveyor of any parish, township, or place, all and every person or persons so appointed shall be comprehended under the word *surveyor* in every part of this act.

If two parts out of three of those assembled in any parish, &c. shall agree in the choice of a person of skill to serve the office of surveyor, and in settling his salary. (No. II.) Justices may appoint such person, and allow him the said salary; and if any surveyor shall die, or become incapable of executing the office, the justices may appoint another person and allow him the salary. If more surveyors than one shall be appointed, they are all comprehended under the word *surveyor*.

§ 70. And in order to have the contents of this act more generally communicated and known, the justices within their respective limits shall at every special sessions to be holden in the week next after the *Michaelmas* quarter sessions, procure and deliver, or cause to be procured and delivered, a printed abstract of the most material parts of this act to every surveyor to be then appointed by them, as the charge hereby directed to be given.

Abstract of the act to be delivered to the surveyors.

§ 48. 70. And the surveyor shall pay to the justices' clerks for the appointment and charge the sum of one shilling.

Fee for the appointment and charge.

§ IV. Who are liable to repair, and in what Proportion.

1. *Of the Parish.*
 [34 G. 3. c. 64.]
2. *Of Individuals bound in respect of Inclosures.*
3. *Of Prescription.*
4. *Of Repairs by private Persons.*
 [13 G. 3. c. 78.]
5. *Of the Proportion.*
 [13 G. 3. c. 78. — 34 G. 3. c. 74. — 42 G. 3. c. 90.]

§ IV. (1.) Of the Parish.

[34 G. 3. c. 64. § 1, 2, 3, 4, 5. 7.]

Parish in general to repair.

It seems to be agreed that of common right (that is, by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the parish wherein they are: But particular persons may also be burdened with the general charge of repairing a highway in two cases, namely, in respect of an inclosure, or by prescription.

And to such an extent is this obligation, that if the inhabitants of a township bound by prescription to repair the roads within the township be expressly exempted by the provisions of a road act, from the charge of repairing new roads to be made within the township, that charge must necessarily fall upon the rest of the parish. *R.* v. *Inh. of Sheffield,* 2 *T. R.* 106. 1 *Russ.* 465.

And upon the same principle it was holden that if particular persons were made chargeable to the repairs of such highways by a statute lately made, and became insolvent, the justices of peace might put that charge upon the rest of the inhabitants. *Anon.* 1 Ld. *Raym.* 725. 1 *Russ.* 465.

And where a statute enacted that the paving of a particular street should be under the care of commissioners, and provided a fund to be applied to that purpose, and another statute, which was passed for paving the streets of the parish, contained a clause that it should not extend to the particular street, it was held that the inhabitants of the parish were not exempted from their common law liability to keep that street in repair; that the duty of repairing might be imposed upon others, and the parish be still liable; and that the parish were under the obligation, in the first instance, of seeing that the street was properly paved, and might seek a remedy over against the commissioners. *R. v. Inh. of St. George, Hanover Square,* 3 *Campb.* 222. 1 *Russ.* 465, 466.

No *agreement* can exonerate a parish from the common law liability to repair; and a count in an indictment against the corporation of *Liverpool,* stating, that they were liable to repair a highway, *by virtue of a certain agreement* with the owners of houses alongside of it, was held to be bad, on the ground that the inhabitants of the parish, who are *primâ facie* bound to the repair of all highways within their boundaries, cannot be discharged from such liability by any agreement with others. *R.* v. *the Mayor, &c. of Liverpool,* 3 *East,* 86. *And see* 3 *Bac. Abr. Highways,* (F.) 1 *Russ.* 466.

It is an incontrovertible position, that by the general law of the land, the parish at large is *primâ facie* bound to repair all highways lying within it, unless by prescription they can throw the onus on particular persons by reason of their tenure; but when that is the case, it is by way of exception to the general rule. *Per Ashhurst J. R.* v. *Inh. of Sheffield,* 2 *T. R.* 106. See also 2 *Saund.* 159 *b.* (*n.*)

Rex v. *Inhabs. of Kingsmoor, T.* 1823, 2 *B. & C.* 190. Indictment stated, " that a certain way was an ancient common highway, and that a certain part situate in an extra parochial hamlet was out of repair, and that the inhabitants of the extra parochial hamlet ought to repair it:" Held, that this indictment was bad, as it did not allege that the inhabitants of the hamlet were immemorially bound to repair; nor that the hamlet did not form part

of a larger district, the inhabitants of which were bound to repair. And *quære*, whether the inhabitants of the hamlet, being extra parochial, would be liable to repair at common law if the indictment had contained the latter allegation? See *per Best* J. *S. C.* p. 195.

R. v. *Cottingham*, 6 *T. R.* 20. This was an indictment against the inhabitants of the parish of *Cottingham* for not repairing a road. By stat. 6 *G.* 3. *c.* 78. for enclosing certain common lands, the commissioners were empowered to set out both public and private roads, which public roads should be repaired in like manner as other public roads, and all *private ways* should be repaired *by such persons and in such manner* as the commissioners in their award should direct. The commissioners directed that all roads, whether public or private, should be repaired in like manner as other public highways are repaired by the laws of this realm. The defendants pleaded that no allotment was made to or for the use or benefit of the inhabitants of the parish under this act; and that at the time of making the award under it, the inhabitants of the parish were not liable to repair the road in question, which was a private road, or any other private road over the lands enclosed. The prosecutor demurred to this plea: and, after argument, judgment was given for the defendants.—Lord *Kenyon* C. J. (*inter alia*) said, It is contended that the legislature meant that the parish, who derive no benefit from this act, should be made subject to the burden of repairing this road. The act empowers the commissioners to set out all the roads, adding that the public roads shall be repaired as other public roads are repaired, and that the private roads shall be repaired *by such person and persons* and in such manner as the commissioners shall direct. And the question is, whether the words "person and persons" extend to any strangers that the commissioners should name, the inhabitants of *Cornwall* or *Yorkshire* for instance, or whether they must be confined to *such persons as are interested in the inclosure?* Common sense requires that the latter construction should be adopted.

Commissioners under an inclosure act (authorising them to set out public and private roads, which public roads should be repaired as other public roads, and which private ways should be repaired by *such persons* and in such manner as the commissioners should direct) cannot direct that the private as well as public roads should be repaired as other public roads are by law to be repaired.

Upon an indictment against the parish of *Haslingfield*, for not repairing a highway, an award made by commissioners under an inclosure act, which awarded the highway to be in a different parish, was holden not to be admissible evidence for the defendants, without showing that the commissioners had given notices which the act required to be given previously to the boundaries having been ascertained by them; it appearing that the usage had not been pursuant to the award: the defendants having since the award, as well as before, repaired the highway. The learned judge who tried this cause reported that he should have no difficulty in admitting the award, and if the usage had been pursuant to it, presuming that the proper notices had been given. *R.* v. *Inh. of Haslingfield.* 2 *M.* & *S.* 558.

R. v. Haslingfield. Award under an inclosure act rejected as evidence of a locality of a highway, the usage not having been pursuant to it, nor the proper notices proved.

R. v. *Inh. of the Parish of Enfield, Sitt. after H.* 1819, *cor. Abbott* C. J. *M.S.* Indictment against the defendants, for not repairing a road, called *Welch's Lane*, and the road over the marshes, leading from the turnpike road at *Enfield Wash* to the government foundry for small arms. Plea, not guilty. In support of the indictment, it was contended, That this lane was an *ancient public highway*, and had been *repaired by the parish*, time out of mind; that the commissioners under the *Enfield* inclosure act could not abolish it as a *public* road, without the order of two justices, which they never obtained; that the

R. v. Inh. of Enfield.

R. v. Inh. of Enfield.

commissioners had set it out, and improperly called it a *private* road, but had directed the parish to repair it; that this was not like the *Cottingham case*, where the parish was not liable to the repair of the road previous to the inclosure, nor had any allotment under the act; for that here the parish of *Enfield* had always repaired this lane, which led from the turnpike road to the river *Lea*, and had, also, an allotment under the act, as well as a share of the timber growing on the chase, and that the commissioners were, therefore, justified when they set out this road, in directing the parish to repair it. Upon the cross-examination of witnesses for the prosecution, it appeared, that at the lower end of *Welch's Lane*, a gate across a part of the road leading over an ancient inclosure into the marshes, had been occasionally locked; and that the farmers holding lands in the marshes, formerly paid threepence or fourpence an acre for carrying their hay through this inclosure, when *Abbott* C. J. stopping the counsel for the crown, said, that unless the prosecutors were prepared to contradict their own witnesses, the case must end:—that a *public* highway must lead from one town or vill to another, and be *free* for the passage of all H. M.'s subjects; whereas, it was proved in evidence, that *Welch's Lane* led *only* to a farm-house, and that the occupiers of the marshes had paid toll for the liberty of bringing their hay along that part of the road over the ancient inclosure; and as to the repairs heretofore done to *Welch's Lane*, it appeared that the tenant of the farm got into the office of surveyor, and put his hand into the parish purse to repair his *own* road; this, therefore, never was a *public* highway. The general inclosure act, which passed on the same day as the *Enfield* inclosure act, *directs*, that all roads over lands to be enclosed, not set out by the commissioners, shall be deemed part of the lands to be inclosed; the commissioners did set out this road, but expressly set it out as a *private* road; the parish, therefore, was not bound to repair it. Verdict, not guilty.

A record of conviction on an indictment against a parish for not repairing a road, will be conclusive evidence, on a plea of not guilty, of the liability of that parish to repair. *R.* v. *St. Pancras*, *Peake's N. P. C.* 219.

34 G. 3. c. 64. Highway lying in two parishes, two justices to determine what parts shall be repaired by each.

(No. XLI.)

(No. XLII.)

By stat. 34 *G.* 3. *c.* 64. § 1. After reciting that it frequently happens that the boundaries of parishes pass through the middle of a common highway, and one side of such highway is situated in one parish, and the other side in another parish, whereby great inconveniences often arise in repairing the same, *it is enacted*, that two justices, on complaint (No. XLI.) of any surveyor of any parish, (stating in writing, and by a plan thereunto annexed, that there is such a highway, one side whereof ought to be repaired by one parish, and the other side by another, and particularly describing the same by metes, bounds and admeasurement thereof,) may issue their summons, (No. XLII.) with a copy of such writing and plan thereunto annexed, to the surveyor or one of the surveyors of such other parish, to appear before them on a day mentioned in such summons, not more than 14 nor less than seven days from the day of the date of such summons; and if the parties appear, such justices may then proceed finally to decide the matter in manner hereinafter mentioned, in case all the parties shall consent thereto; but in case the surveyor summoned shall not appear on such first summons, or appearing shall require

further time, such justices shall adjourn the further consideration of the matter for any further time, not more than 21 nor less than 14 days from the day of such adjournment, of which the surveyor not appearing shall have notice; on which day the said justices shall proceed to hear the parties and their witnesses, and whether the party summoned does or does not appear, shall proceed to examine and finally determine the matter in form following; (viz.) They shall divide the whole of such highway by a transverse line crossing the same into two equal parts, or into two such unequal parts and proportions, as, in consideration of the soil, waters, floods, the inequality of such highway, or any other circumstances attending the same, they in their discretion shall think just and right; and declare, adjudge, and order (No. XLIII.) that the whole of such highway on both sides thereof, in one of such parts, shall be maintained and repaired by one of such parishes, and that the whole thereof on both sides in the other of such parts shall be maintained and repaired by the other of such parishes; and shall cause such their order, and a plan of such highway, and the allotment thereof as before mentioned, to be fairly delineated on paper or parchment, and filed with the clerk of the peace; and shall also cause such posts, stones, or other such boundaries to be set up in such highway as they shall think necessary for ascertaining such division and allotment aforesaid.

34 G.3. c.64.

(No. XLIII.)

Order, &c. to be filed with clerk of the peace.

§ 2. And after such order and plan shall be so filed with the clerk of the peace as aforesaid, such parishes shall be bound as of common right to maintain and keep in repair such parts of such common highway so allotted to them as aforesaid, and shall be liable to be prosecuted and indicted for neglect of such duty, and shall in all respects whatsoever be liable and subject to all the provisions, regulations, and penalties contained in any act of parliament, for the repair of the highways, in like manner as they are liable to repair any other common highway within such parishes respectively; and also shall be discharged from the repair of such parts of such highway as shall not be included in their respective allotments.

Each parish afterwards bound to repair the parts so allotted.

§ 3. And all costs, charges, and expences incurred, shall be defrayed by such two parishes, to be ascertained by such two justices; and if not paid, either such justices, or any other justice, may levy the same by distress and sale, with the costs of such distress, on the goods and chattels of any surveyor of the highways of the parish refusing or neglecting to pay.

Costs of the proceedings.

§ 4. Provided, that nothing herein shall affect, change, or alter in any manner whatsoever, any boundaries of counties, lordships, hundreds, manors, or any other division of public or private property, nor the boundaries of any parishes, otherwise than for the purpose of repairing such particular portion of the highways in the manner hereinbefore mentioned.

Not to alter the boundaries of counties, &c.

§ 5. Nothing herein shall relate to highways repairable by bodies politic or corporate, townships, or other such places or private persons, by reason of tenure of lands, or otherwise howsoever, but shall be construed to relate to such highways, the repair of which belongs to parishes only; unless such bodies or persons be desirous that the same shall be placed under the regulations of this act; in which case such two justices may proceed therein in like manner as is herein directed with respect to parishes.

Not to relate to highways repaired by bodies politic, tenure, &c. without consent.

34 G.3. c.64. Appeal.

§ 7. Either of the two parishes, by an order in vestry specially called for the purpose, may appeal to the next quarter sessions of the county where such parishes shall lie after such order and plan are filed as aforesaid, who may make such order as shall appear to them to be just, either by affirming, quashing, or amending the order of the two justices; and shall allow costs to either party as they shall think right; which order of sessions shall not be removed by *certiorari* or otherwise, but shall be final to all intents and purposes whatsoever.

Certiorari.

§ IV. (2.) Of Individuals bound in respect of Inclosure.

Repairing in respect of an inclosure.

A man may be bound to the repair of a highway in respect of an inclosure of the land wherein it lies; as where the owner of lands not inclosed, next adjoining to the highway, incloses his lands on both sides thereof; in which case he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the inclosure, if it were then any way defective; because before the inclosure, the people used, when the way was bad, to go for their better passage over the fields adjoining out of the common tract, which liberty is taken away by the inclosure. 1 *Haw. c.* 76. § 6.

[Note. *See* post, *this title, sect. XI. as to inclosure by act of parliament.*

And if the way is not sufficient, any passenger may break down the inclosure, and go over the land, and justify it, till a sufficient way be made. 3 *Salk.* 182.

Also it hath been holden, if one inclose land on one side, which hath been anciently inclosed of the other side, he ought to repair all the way; but if there be not such an ancient inclosure of the other side, he ought to repair but half that way. 1 *Haw. c.* 76. § 7.

Therefore, if there be an old hedge time out of mind on one side of the way, and a person having land on the other side make a new hedge, such person shall be charged with the whole repair. 1 *Sid.* 464.

But if one person make an hedge on one side of the way, and another person make an hedge on the other side of the way, they shall be chargeable to the repair thereof by moieties. *Ib.*

But it is said that wherever one is bound to repair a highway, or part thereof, in respect of an inclosure, and he lays it open again as it was before, he shall be freed from the charge of such repair. 1 *Haw. c.* 76. § 7.

§ IV. (3.) Of Prescription.

Repairing by prescription.

A particular person may be bound to repair a highway in respect of a prescription; and it is said, that a corporation aggregate may be compelled to do it, by force of a general prescription, that it ought and hath used to do it, without shewing that it used to do so in respect of the tenure of certain lands, or for any other consideration; because such a corporation, in judgment of law, never dies, and therefore if it were ever bound to such a duty, it must needs continue to be always so; neither is it any plea, that such a corporation have always done it out of charity, for what it hath always done, it shall be presumed to have been always bound to do. But it is said, that a person cannot be charged

with such a duty, by a general prescription from what his ancestors have done, unless it be for some special reason, as the having lands descended from such ancestors, which are holden by such like service. 1 *Haw. c.* 76. § 8.

This applies to individual persons only, and not to an aggregate body of persons who compose the inhabitants of a district or division in a parish or township. *R.* v. *Inh.* of *Ecclesfield,* 1 *B. & A.* 348.

R. v. *Inhab. of the Parish of St. Giles, Cambridge, T.* 56 *G.* 3. 5 *M. & S.* 260. Presentment for not repairing a highway in the parish of *St. Giles, Cambridge.* Plea, that the inhabitants of the parish of *Great St. Mary,* in the town of *Cambridge,* from time whereof, &c. until the passing of the act 37 *G.* 3. *c.* 179., have repaired, and been used and accustomed to repair, and during all that time of right ought to have repaired, and but for the passing of the said act, and the provisions therein made respecting the repairs of the said part of the said king's common highway in the presentment mentioned to be in decay, from the passing of the said act hitherto of right ought to have repaired, and still of right ought to repair, the said part of the said highway, when and as often as it hath been or may be necessary; and that by the said act, intituled, &c. it was (among other things) enacted, that the said part of the said highway (setting it out) should from and after the passing of the said act, be repaired by trustees therein mentioned; and that the inhabitants of *Great Saint Mary* should be exempted from repairing the same, in consideration of 150*l.* agreed to be contributed by them towards the expence of making and repairing the same; and that in and by the said act it was further declared, that the said act, and all the powers thereby given, should commence and take effect the day the same should receive the royal assent, and should continue thenceforth for 21 years next ensuing, and thence to the end of the next session of parliament; and that the said act is in full force. Without this, that the inhabitants of the said parish of *St. Giles* the said part of the highway ought to repair and amend, when and so often as should be necessary, as by the said presentment is above supposed, &c. Demurrer. Joinder.—After argument, Ld. *Ellenborough* C. J. said, The principle of law I take to be clear, that the inhabitants of a parish are liable of common right to repair the highways lying within it, unless they can shew that this burden is cast upon some other persons, under an obligation equally durable with that which would have bound the parish, which obligation must arise in respect of some consideration of a nature as durable as the burden cast upon them. Now in the present case nothing of this kind appears; but all that is alleged is, that the parish of *St. Mary* has immemorially repaired. This I hold to be insufficient; and, therefore, the defendants having failed to shew any consideration binding upon the persons whose liability they would needs substitute, the burden must rest with themselves. I do not go into the question touching the effect of the *exemption,* because my opinion is founded on this, that no consideration being pointed out whereby to subject the inhabitants of the parish of *St. Mary* to the reparation of a highway lying in *alienâ parochiâ,* the law will not cast this burden upon them. To hold otherwise would, I think, be raising a doubt as to the common law liability of parishes to amend their own highways. It

Indictment against a parish for non-repair of a highway lying within it; Plea, that the inhabitants of another parish *have repaired and been used and accustomed to repair, and of right ought to have repaired:* Held ill, for the plea ought to have shewn a consideration.

R. v. Inh. of St. Giles, Cambridge.

appears to me that the defendants are liable, inasmuch as they have not shewn any others who are.—*Bayley* J. There is not any case which looks to an obligation like the present. Particular persons cannot be charged by prescription without shewing a consideration; but a corporation sole or aggregate may be bound to repair by usage or prescription, without more. Here I find no consideration alleged. It was suggested, that the land over which the highway lies might originally have been dedicated to the public, in consideration that the parish of *St. Mary*, who were chiefly benefited by it, would undertake the burden of its reparation; but, upon consideration, I think that this cannot be; because the inhabitants of a parish cannot, as if they were a corporation, bind their successors; if they could, and were to become once liable, they must remain so for ever, however useless the highway might, in after ages, turn out to be.—*Holroyd* J. The only ground of distinction that can be suggested between this case and the case where particular individuals are to be charged, has been suggested; viz. that inasmuch as a parish is composed of a body of inhabitants which has continuance by succession in like manner as a corporation, a parish may also be charged as a corporation, although, like it, the parish, individually, is perpetually changing. It has been said that it might have been for the convenience of the parish of *St. Mary* that this land was dedicated to the public for the purpose of a highway; and that in consideration of this boon the parish might have taken on themselves the burden of its reparation. But I think, upon reflection, that this could not be a legal consideration binding on the successors, because a burden might thereby be imposed on them beyond the benefit which they were to receive; for they would have to repair the highway not only for their own use, but also for the public. This plea, then, is improperly pleaded; for when the highway lies out of the parish, a consideration must be shewn. I say nothing as to the form of pleading where the highway lies within a township or division of a parish which is charged with the repairs. (See *R.* v. *Ecclesfield*, 1 *B.* & *A.* 348.) Judgment for the crown.

See *R.* v. *Inhab. of W. R. of Yorkshire*, 4 *B.* & *A.* 623. vol. i. title "Bridges,"

It seems, that an indictment charging a tenant in fee simple with having used of right to repair such a way by reason of the tenure of his land, is certain enough, without adding, that his ancestors, or those whose estate he hath, have always so done; for that is implied. 1 *Haw. c.* 76. § 8.

But the indictment must set forth where those lands lie. 2 *Hale*, 181.

And in the case of *Rider* v. *Smith*, 3 *T. R.* 766. it was determined that in an action on the case for not repairing a private highway leading through the defendant's close, it is sufficient to allege that the defendant, by *reason of his possession of the said close* called, &c. and of two closes of land with the appurtenances, contiguous and next adjoining thereto, is bound to repair the said way.

Townships or other divisions within a parish may be liable to repair.

Under the head of prescription may be considered the case where, not the whole parish, but particular townships or other divisions within the parish have for time immemorial repaired particular roads within that parish; which prescription, being an-

cient, and without interruption, is presumed to have had its origin by licence on an inquisition of *ad quod damnum*, or other legal commencement; and it would be very prejudicial in large parishes, if every inhabitant were liable to repair throughout that whole parish, when the time occupied in going and returning might exceed the time appointed by the law for labour.

But a private agreement amongst the inhabitants, not being ancient, nor confirmed on an inquisition of *ad quod damnum*, that some of the inhabitants shall repair one part of the highway, and some of them another part, is not good: it may be binding amongst the parties thereunto, so as on a breach thereof one party may have an action upon the case against the other; but with respect to the public, they continue equally liable as before; for such private agreement cannot alter the law. *R.* v. *The Mayor, &c. of Liverpool*, 3 *East*, 84.

But on indictment the reason why they are so liable must be set forth.

In the case of *R.* v. *Inhab. of Great Broughton in Cumberland*, 5 *Burr.* 2700, an indictment was brought in the usual form, alleging that a certain part of the highway, &c. at the parish of *Bridekirk*, in the county aforesaid, was ruinous, &c., and that the inhabitants of the division of *Great Broughton* in the parish of *Bridekirk* aforesaid, the common highway aforesaid, (so as aforesaid being in decay) from the time whereof the memory of man is not to the contrary, *ought to repair and amend*, when and so often as it shall be necessary.—On a verdict being found against the inhabitants, a writ of error was brought in the K. B.; and the assignment of error was, "that it is not shewn or alleged in the indictment that the inhabitants of this division *have used and been accustomed* and of right ought to repair and amend this highway, or in what right or for what cause they ought to repair and amend it."—By the court: At the common law, and of common right, the inhabitants of a parish at large are bound to repair the highways; and here is no reason shewn why this particular division should be obliged to do it. It ought to appear upon the face of the indictment, by what right the charge was laid upon this particular division. If you lay a charge upon persons against common right, you must shew how they are bound; and it is not enough to shew what they immemorially ought to repair, but it should be shewn that they *have repaired.* The court, therefore, held this indictment for that reason to be bad, and reversed the judgment.

So in the case of *R.* v. *The Hamlet of Penderryn*, 2 *T. R.* 513. it was decided, that a presentment under stat. 13 *G.* 3. *c.* 78. § 24. against a smaller district than a parish, must state expressly *how* the inhabitants thereof are liable to the repairs of the roads.

But if the inhabitants of a township, who were bound by prescription to repair the roads within the township, be expressly exempted by the provisions of the road act from the charge of repairing new roads to be made within the township, that charge must necessarily fall on the rest of the parish. *R.* v. *Inhab. of Sheffield*, 2 *T. R.* 106.

And the quantity of road which they must repair, should be shewn.

If the inhabitants of a parish plead, that several included townships are bound by prescription to repair the highways within them, and that part of the highway in question is within one of those townships, and the residue within the other, the plea must specify how much lies within the one, and how much within the other. *R.* v. *Inhab. of Bridekirk*, 11 *East*, 304.

Where the inhabitants of a parish pleaded that the inhabitants of a particular district were bound by prescription to repair all common highways situate within that district, save and except one common highway, within the said district, it was holden that the plea might be supported, although it appeared that the excepted highway was of recent date; and it was also holden that in such a plea it was not necessary to state by whom the excepted highway was repairable; and such a plea will be good, although it does not state any consideration for the liability of the inhabitants of the district. *R.* v. *Inhabitants of Ecclesfield*, 1 *Stark. N. P.* 393. 1 *B. & A.* 348. *See also Gateward's case*, 6 *Rep.* 60, *and R.* v. *Inhab. of Yorkshire*, 4 *B. & A.* 623., Vol. I., tit. Bridges, § I.

Where in an indictment against a *township* for non-repair of a road, the prescription stated and proved was, that its inhabitants had been immemorially used to repair all roads situate within it, which, but for such usage, would be repairable by the parish at large: Held, that this places the *township* in the situation of a *parish*, and that it is necessary for the defendants to shew by evidence some other persons in certainty who are liable, in order to deliver themselves from their liability to repair.

R. v. *The Inhab. of the Township of Hatfield*, M. 1 G. 4. 4 *B. & A.* 75. Indictment against defendants for non-repair of a highway. The first count alleged a prescription, that the defendants, from time immemorial, had repaired and been accustomed to repair, and of right ought to have repaired, and still of right ought to repair, as often as it should be necessary, such and so many of the common king's highways, situate within their township, as would otherwise, and but for such usage or prescription, be repairable by the inhabitants of the parish of *Hatfield* at large. The second count varied only in stating the prescription to be for the several and respective townships within the parish of *Hatfield* to repair separately from each other the several roads situate within each township, &c. respectively. Plea, general issue. At the trial at the last *York* assizes, before *Bayley* J., a verdict for the crown was found by the jury, subject to the opinion of the court of K. B., on a case which stated, that the road, a part of which formed the subject of this indictment, was one leading from *Doncaster* to *Epworth*, and other places in the county of *Lincoln*. Its course lay along a bank commonly called the *Low Level Bank*, elevated one or two feet above the adjacent country. It was bounded on one side by a large open drain, and on the other by fence ditches. This bank was made by the earth of the drain. By articles of agreement, dated 24th *May*, in the second year of the reign of *Charles* I., between that king and *Cornelius Vermuyden*, esquire, which recited that the king was seized in fee of *Hatfield Chase* and *Ditch Marsh*, and of divers manors and lands adjoining, and that certain lands, wastes, commons, and waste grounds, situate, lying, and being upon each side of the river *Idle*, and abutting on the rivers *Dun* and *Ayre* to the north, and the river *Trent* towards the south, being parcel of the said premises, and containing, by estimation, 60,000 acres, or thereabouts, were subject to be surrounded and drowned with water, in such manner that little or no benefit could be made thereof, unless special care was taken for inning and draining the same. The said articles contained an agreement on the part of *Cornelius Vermuyden* to drain these lands, in consideration of himself or his nominees having the fee-simple of one-third part of the lands when drained. In this agreement were the following clauses: — "And it is further agreed, and H. M. doth hereby declare, that the said *Cornelius Vermuyden*, and others the parties aforesaid, shall and may, at their wills and pleasures, and as to him or them shall be thought most necessary and expedient, cut, dig, and make, or cause to be made, such and so many channels, watercourses, banks,

highways, sosses, sluices, and other receptacles for water, and shall have for himself and his servants, and workmen, with carts and carriages fit and convenient, free ingress and regress for the perfecting and performance of the said works, and draining the lands and grounds aforesaid, without the let, denial, hindrance, or interruption of any person or persons whatsoever, and shall also have and take such quantity and proportion of earth, reed, and other things and materials within the said grounds for perfecting the said work as by him or them shall be thought necessary and useful; and shall also have for his and their use and uses, freely, without interruption, the benefit of all and singular channels, watercourses, and sluices, which are now already made or digged within the said lands or grounds, and the same to turn, change, or alter for the more necessary draining of the said grounds, and perfecting the said works, or as he or they shall think fit: and it is hereby further concluded and agreed, that if the said *Cornelius Vermuyden*, and other the parties and undertakers by him to be employed as aforesaid, shall have cause at any time or times to use any of the lands and grounds lying or being without the compass of the grounds hereby intended to be drained and laid dry as aforesaid, and not subject to surrounding for any passage of water or otherwise, then it shall and may be lawful to and for the said *Cornelius Vermuyden*, and other the parties aforesaid, to use the same, so far as shall be necessary, in and for the performance of the said works. The drainage having been partly executed in the 11th year of the reign of *Charles* I., 12,459 acres, being one-third part of the lands then drained, were, in pursuance of the above agreement, conveyed in fee to Sir *William Curteine* and others, the nominees of *Cornelius Vermuyden*. The participants of the *Level of Hatfield Chase* were the persons who were the owners of the lands subsequently conveyed under the above articles to *Cornelius Vermuyden*, or his nominees. The road in question, which ran through these lands, had been, as far back as living memory went, repaired by the participants out of their general scots. These repairs were made by sand which was brought from a distance, and by throwing soil from the adjacent drains, when cleansed out by the participants for the purposes of the drainage, sand being the usual material for the repairs of that road. The participants were not a corporation, nor was it ascertained at the trial who all the different individuals composing that body were, though the names of some were proved. No repairs were proved to have been done by the defendants upon the particular road indicted; but their prescriptive liability, as stated in the indictment, was proved. The question for the opinion of the court was, whether the inhabitants of the township of *Hatfield* were liable to repair this road; and the court were to be at liberty to make any presumption which they should think the jury ought to have made.—After argument, *Abbott* C. J. The prescription stated in this indictment, and which has been proved in evidence, is one which places the inhabitants of this township in the same situation as the inhabitants of a *parish*, as to their legal liability to the repair of roads locally situated within their district. This circumstance distinguishes the case from those where the prescription stated on the record applies only to the particular road indicted. Then the question is, whether, in this case, the defendants

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have, with any degree of certainty, shewn that any other persons are liable to the burden. If the case had stopped with the repairs done by the participants, it would have been sufficient, but it does not; for we have the history of those participants stated in it, who are, it seems, the representatives of *Cornelius Vermuyden*, to whom King *Charles* the first assigned one-third of certain crown lands, then of little value, as a compensation for draining the whole. In pursuance of this agreement, the drain and bank were, in all probability, executed; and on the bank this road has since been made. I am, therefore, not at all satisfied that the road had any immemorial existence; and if so, that reduces the commencement of the repair, given in evidence, to the reign of *Charles* the first, which negatives any prescriptive liability on the part of these participants. I do not think, therefore, that the defendants have established that the participants are liable, *ratione tenuræ*. And the circumstances seem also to me to negative their liability, by reason of inclosure. Upon the whole, I am of opinion, that there must be judgment for the crown.—*Bayley* J. The prescription stated in this indictment makes the township, for all legal purposes, as to repair of roads, a parish. Then, if so, these defendants are liable, unless they can throw the burden on some other persons. I entirely agree with my Lord Chief Justice, that from the circumstances stated in this case, we cannot make the presumption, that this was an immemorial highway, or that the participants are liable to repair it *ratione tenuræ*. The repairs done by them are either referable altogether to mistake, or to a disinclination, on their part, to throw the burden on the township.—*Holroyd* J. In this case the township is, by the prescription, placed on the same footing as a parish, both as to immemorial roads, and also as to any new highways which may have been subsequently made; and, therefore, whether the road indicted be an immemorial highway or not, the defendants must repair it, unless they can shew with certainty some other persons who are liable. The usage to repair, proved at the trial, would have been conclusive against the participants, unless there had been evidence to rebut it. That evidence, however, seems to me to be satisfactory. Here the wastes and commons originally surrounded by rivers were drained, and one-third part of them was allotted as a reward to *Vermuyden*, for the drainage. This formed a new division, which had not existed before, and the repairs proved are only co-extensive with that new division. It seems to me, therefore, to follow, as a very strong presumption, that the usage to repair could not have any existence, previously to the drainage, but commenced at that time; for if it had commenced before, in all probability other lands, as well as those of the participants, would have also been chargeable. I think, therefore, that the defendants have failed in making out, that the participants are liable, *ratione tenuræ*. As to their liability, *ratione clausuræ*, it appears on the evidence, that the road was contemporaneous with the inclosure. But if it were clear, that the fence ditches were made at a subsequent period, still that would not make the participants, as a body liable, but only those persons who actually made and continued the inclosure; and we have no evidence to shew who those persons were, or that they ever repaired the road. Judgment for the crown.

§ IV. (4.) Of Repairs by private Persons.

[13 G. 3. c. 78. § 23. 51.]

By stat. 13 *G.* 3. *c.* 78. § 23. Every surveyor shall, from time to time, give information (No. LVII.) upon oath to the justices, or any two of them, of all such highways, and of all bridges, causeways, or pavements, upon such highways, as are out of repair, and ought to be repaired by any person or persons, bodies politic or corporate, by reason of any grant, tenure, limitation, or appointment, of any charitable gift, or otherwise howsoever; and the said justices shall limit a time for repairing the same, of which notice shall be given by the said surveyor to the occupier or occupiers of the lands or tenements liable to the burthen of such repairs, or to such other person or persons, bodies politic or corporate, as are chargeable with the same; and if such repairs shall not be effectually made within the time so limited, the said justices shall, and are hereby required to present such highways, bridges, causeways, or pavements, so out of repair, together with the person or persons, bodies politic or corporate, liable to repair the same, at the next general quarter sessions of the peace for the limit wherein such highway shall lie, and the justices at such quarter sessions may, if they see just cause, direct the prosecution to be carried on at the general expence of such limit, and to be paid out of the general rates within the same.

13 G. 3. c. 78. Justices, on information of surveyor, may order highways, liable to be repaired by tenure, &c. to be repaired within a limited time; and if not repaired within that time, may present them. (No. LVII.)

§ 51. Where any lands have been, or shall be given, for the maintenance of causeways, pavements, highways, and bridges, all such persons who are, or shall be enfeoffed or trusted with any such lands, shall let them to farm at the most improved yearly value, without fine; and the justices of the peace, in their open sessions, shall inquire, by such ways and means as they shall think fitting, into the value of all such lands so given, or to be given, and order the improvement and employment of the rents and profits thereof according to the will and direction of the donor of such lands, if they find that the persons so intrusted have been negligent or faulty in the performance of their trust, (except such lands have been given for the uses aforesaid to any college or hall in either of the universities of this kingdom, which have visitors of their own.)

Persons enfeoffed with lands for the maintenance of causeways, highways, and bridges, shall let them to farm at the most improved value.

§ IV. (5.) Of the Proportion.

[13 G. 3. c. 78. § 36. — 34 G. 3. c. 74. § 2. 4, 5. — 42 G. 3. c. 90. § 174.]

By stat. 34 *G.* 3. *c.* 74. § 4. (*a*) The surveyor, together with the inhabitants and occupiers of lands, tenements, woods, tithes, and hereditaments, shall, at proper seasons in every year, use their endeavours for the repairs of the highways, and shall be chargeable thereto as followeth; (that is to say,) every person keeping a waggon, cart, wain, plough, or tumbrel, and *three* or more horses or beasts of draught, used to draw the same, shall be deemed to keep a *team, draught*, or *plough*, and be liable to perform statute

34 G. 3. c. 74. Proportions of statute labour.

Persons keeping a team, draught, or plough, and not occupying

(*a*) By this statute, which was passed to explain and amend the regulations in the General Highway Act, 13 *G.* 3. *c.* 78. respecting statute duty, it is enacted, § 7., that all the clauses, powers, and provisions contained in stat. 13 *G.* 3. c. 78. (except such as were thereby repealed or altered) should continue in force in the same manner as if they were re-enacted in that act.

34 G.3. c.74.

above 50*l.* a year in the parish where he resides, shall send for six days one carriage and two men.

duty with the same, in the parish, township, or place, where he resides; and shall, six days in every year, (if so many days shall be found necessary,) to be computed from *Michaelmas* to *Michaelmas*, send, on every day and at every place, to be appointed by the surveyor for the amending the highways in such parish, township, or place, *one* wain, cart, or carriage, furnished after the custom of the country with oxen, horses, or other cattle, and all other necessaries fit to carry things for that purpose, and also *two able men* with the same; which duty, so performed, shall excuse every such person from his duty in such parish, township, or place, in respect of all lands, tenements, woods, tithes, or hereditaments, not exceeding the annual value of 50*l.*, which he shall occupy therein.

If occupying 50*l.* a year, above 50*l.* a year in the same parish;

or 50*l.* a year in another parish.

§ 4. Every person keeping such team, draught, or plough, and occupying in the *same* parish, township, or place, lands, tenements, woods, tithes, or hereditaments, of the yearly value of 50*l.*, *over and beyond* the said yearly value of 50*l.* in respect whereof such team duty shall be performed;—and every such person occupying lands, tenements, woods, tithes, or hereditaments, of the yearly value of 50*l.*, in any *other* parish, township, or place, besides that wherein he resides;—and every other person *not* keeping a team, draught, or plough, but occupying lands, tenements, woods, tithes, or hereditaments, of the yearly value of 50*l.*, in any parish, township, or place;—shall in like manner respectively, and for the same number of days, find and send one wain, cart, or carriage, furnished with not less than *three horses* or four oxen, and one horse or two oxen, and two horses and *two able men*, to each wain, cart, or carriage, and in like manner for *every* 50*l.* *per annum* respectively, which every such person shall further occupy in any such parish, township, or place, respectively; such wains, carts, or carriages, to be employed by the surveyor in the repairing and amending the highways within the parish, township, or place, where such lands, &c. shall respectively lie.

Persons not keeping a team, draught, or plough; or keeping one, and occupying lands in another township, shall pay a sum in lieu.

§ 4. Every person who shall *not* keep a team, draught, or plough, but shall occupy lands, tenements, woods, tithes, or hereditaments, *under* the yearly value of 50*l.* in the parish, township, or place where he resides, or in any other parish, township, or place;—and every person *keeping* a team, draught, or plough, and occupying lands, &c. under the yearly value of 50*l.* in any *other* parish, township, or place than that wherein he resides;—shall respectively contribute to the repair of the highways, and pay to the surveyor, in lieu of such duty, the sums following:—(See stat. 54 *G.*3. *c.* 109. § 5. *post.*)

Keeping a team, and not occupying 30*l.* a year.

§ 4. Provided that no person keeping such team, draught, or plough, and performing duty with the same as aforesaid in the parish, township, or place where he resides, and not occupying lands, tenements, woods, tithes, or hereditaments, within the same of the yearly value of 30*l.*, shall be obliged to send more than *one* labourer with such team, draught, or plough.

Keeping one or more carts, and one or two horses, &c. only.

§ 2. Every person who shall not keep a team, draught, or plough, but shall keep one or more *cart* or *carts*, and one or two horses or beasts of draught only, used to draw in each of such carts upon the highways, shall be obliged to perform his statute duty for the like number of days with such cart or carts, and horse or horses, or beasts of draught, and *one labourer* to attend

each cart; or to pay for the lands, tenements, woods, tithes, and hereditaments which he shall occupy, according to the rate hereinafter mentioned, at the option of the surveyor. 34 G.3. c.74.

§ 2. And if the teams, draughts, or ploughs, or any of them, shall not be thought needful by the surveyor on any of the said days, then every such person who shall have sent any such team, draught, or plough, according to the directions aforesaid, shall, according to the notice given to him by the surveyor, send unto the said work for every one so spared three able men; or pay 4*s.* 6*d.* in lieu thereof, at the option of the surveyor. **Team duty may be exchanged for labourers.**

By stat. 13 *G.3. c.*78. § 36. Where the employment for teams is of such sort that two horses will be sufficient for one cart, or where a stand cart with one horse shall be necessary, the surveyor may call upon any person liable to send a team, draught, or plough, by virtue of this act, who keeps one or more cart or carts, and three or more horses, to send such cart or carts, horse or horses, to perform his statute-duty, as the surveyor shall find most convenient, and shall direct; and the surveyor shall allow every such stand cart and one horse as half a team, and every cart and two horses as two-thirds of a team; and if a waggon shall be found necessary for any particular business, the surveyor may require the duty, or any part thereof, to be performed with such waggon, by any person who keeps one; which directions of the surveyor shall be observed, or the person liable to perform such duty shall forfeit such sum as the duty so required of him shall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, draught, or plough. 13 G.3. c.78. **The surveyor may call for part of a team where he thinks it necessary.**

But by stat. 42 *G.* 3. *c.*90. § 174. No serjeant, corporal, or drummer of the militia, nor any private man, from the time of his inrolment until his discharge, shall be compelled to serve as a peace or parish officer, or to perform any highway duty, commonly called *statute work.* 42 G.3. c.90. **Militia men exempted.**

§ V. Composition instead of Statute Duty.

[13 G.3. c.78. § 40, 41, 42. 44. — 34 G. 3. c. 74. § 4, 5, 6.— 44 G. 3. c. 52. § 2. — 54 G.3. c. 109. § 5, 6.]

By stat. 54 *G.*3. *c.*109. § 4. After reciting that whereas by stat. 34 *G.*3. *c.*74. it is enacted, that it shall be at the option of the surveyor either to require the statute duty in kind, or a composition in money in lieu thereof, at certain rates which are therein fixed: And whereas by stat. 44 *G.* 3. *c.* 52. § 2. the rates for such statute duty have been increased, so far as respect teams, draughts, ploughs, and carts, with one or two horses: And whereas the actual wages of labour, and the actual rate of hiring teams, carts, horses, or oxen, vary at different times and in different parts of *England*; it is therefore enacted, that in all cases in which it shall be made to appear to two or more justices of the peace acting within the district, by the surveyors of the highways, or of any turnpike road, (No. LI.) that the maintenance and repair thereof can be more effectually carried on by a composition in money than by a performance of the statute duty in kind, he or they shall be at liberty to require such composition in money, upon receiving an authority (No. LII.) under the hands and seals of the said justices for 54 G.3. c.109. **Composition.** (No. LI.) (No. LII.)

54 G.3. c.109. § 4.

Composition.

that purpose, in lieu of either the whole or of any certain part of the statute duty, from the several persons who are bound by law to perform such statute duty; and the justices of the district at their special sessions for the highways held in the week next after *Michaelmas*, yearly, shall fix such rates as they shall adjudge reasonable, as a composition in lieu of the teams, carts, horses, oxen, or labour, which such persons are bound in the proportions now fixed by law to provide or perform; which rates the said justices are hereby authorised and required annually to make known at such special sessions, due regard being had to the actual wages of labour, and to the actual rate of hiring teams, draughts, ploughs, carts, horses, or oxen, in the parish, place, or district in which such composition is required; and such composition shall be paid in the same manner, and within the same period, and subject to the same regulations and provisions, as are now by law established for enforcing the payment of compositions in lieu of statute duty: provided always, that in case where the whole composition in money shall not be required in lieu of the whole of the duty in kind, such composition shall be demanded in fair and equal proportions from each and every person liable to pay the same, unless any of the said persons shall prefer to pay a composition for the whole of their statute duty, according to the rates fixed in the manner herein directed.

Two magistrates authorised the surveyor of a turnpike road which ran through twenty-nine townships, to collect for the repair of the road a composition in lieu of the statute duty. The surveyor was not examined upon oath as to the necessity of the composition. He afterwards made an assessment of sixpence in the pound upon the annual value of the lands of a particular township through which the turnpike road passed. The sum to be collected under the assessment was the utmost

Sir Thomas Stanley, Bart. v. *Fielden, Esq., Congreve, Esq., and Topham, H. 2 G.4. 5 B. & A. 425.*— Trespass for seizing and taking the plaintiff's oxen, and detaining them for two days, until the plaintiff paid 31*l.* 5*s.* to regain them. *Plea* 1st, not guilty; 2dly, justification under a warrant of distress, to levy the sum of 29*l.* 5*s.* due from the plaintiff, which had been assessed upon and demanded of him, as a composition in lieu of the statute duty that he was liable to perform, as occupier of lands in the township of *Hooton*. *Replication*, that the defendants committed the trespasses of their own wrong. At the trial at the Spring assizes for the county of *Chester*, 1821, it appeared that the cattle, for the detention of which this action was brought, were seized by the defendant, *Topham*, under a warrant of distress, granted by *Fielden* and *Congreve*, who were magistrates acting for the hundred of *Wirral*, in the county of *Chester*. The warrant was to levy a sum of money for the proportion of statute duty due from the plaintiff, as owner of lands in the township of *Hooton*. It was given in evidence on the part of the plaintiff, and was as follows: "Whereas by an assessment made upon the occupiers of lands, &c. within the township of *Hooton*, in the district and hundred of *Wirral*, in the county of *Chester*, for the purpose of raising a composition in money, in lieu of the statute duty in kind, for the maintenance and repair of such part of the road and highway leading from the city of *Chester* to the *Woodside Ferry*, in the township of *Birkenhead*, in the county of *Chester*, as is situate within the township of *Hooton*, pursuant to an order or authority of two justices acting for the said district and hundred for that purpose, according to the directions of the statute in that behalf: Sir *T. Stanley*, Bart., was charged the sum of 29*l.* 5*s.*, as his share and proportion of the said assessment, in respect of the lands, &c. which he occupied within the township of *Hooton*; and whereas it appearing to *R. Congreve* and *J. Fielden*, esqrs., being justices of the peace for the county

of *Chester*, acting for the district and hundred of *Wirral*, upon the application of *J. Johnson*, one of the surveyors of the highways of the township of *Hooton*, that the said sum of 29*l*. 5*s*. had been duly demanded from the plaintiff, and that he had refused to pay it for the space of ten days after such demand made: they, the said *R. Congreve* and *J. Fielden* did summon the said Sir *T. Stanley* personally to appear before them and other justices, to be assembled at a special sessions to be holden for the said district, and at a place and time therein mentioned, to shew cause why he refused to pay the said sum; and whereas at a special sessions, now holden for the hundred of *Wirral*, at the place therein mentioned, before them, the said Sir *T. Stanley*, had not appeared, pursuant to the summons, they, the said *J. Fielden* and *R. Congreve*, adjudged him liable to pay the said sum, and therefore they commanded all constables, &c., to levy the same by distress, &c., together with the expences of the distress. It was objected by the counsel for the defendants, on the plaintiff's case being closed, that there ought to be a nonsuit, inasmuch as the warrant must be considered *primâ facie* evidence of all the facts therein stated, and if so, then it appeared, that by an assessment pursuant to an order of two justices, according to the directions of the statute, the plaintiff was charged with the sum therein mentioned, and refused to pay it, and that this must be taken to be an adjudication, binding and valid, until regularly quashed. The learned judges refused to nonsuit the plaintiff, but reserved the point, and the cause proceeded. On the part of the defendants the following facts were proved: *Crackenthorpe*, the surveyor of the turnpike road, between the 29th *September* and 8th *October*, 1819, applied to the clerk of the magistrates for an authority, in writing, to empower him to call for a composition in money, in lieu of the statute duty. On the 8th *October*, a special sessions were held, at which *Congreve*, one of the defendants, and *William Wilson Currie*, acting justices for the district of *Wirral*, attended, and *C.*, the turnpike surveyor, was present, but was not examined upon oath or otherwise; and then *Congreve* and *Currie* signed the following authority in writing: "It having been made appear to us, two of his majesty's justices of the peace acting within and for the district and hundred of *Wirral*, in the county of *Chester*, by *Harvey Crackenthorpe*, the surveyor of the turnpike roads from the city of *Chester* to the *Woodside Ferry*, in the township of *Birkenhead*, in the county of *Chester*, and from the said city to the Assembly House in *Park-gate*, in the township of *Great Neston*, in the said county, and from *Great Neston* to *Woodside Ferry*, and from the road leading from the city of *Chester* to *Park-gate* aforesaid, to the road leading from the same city to the said *Woodside Ferry*, that the maintenance and repair of the said roads can be more effectually carried on by a composition in money than by a performance of the statute duty in kind; we do hereby authorize the said *Harvey Crackenthorpe* to require such composition, in money, in lieu of the whole statute duty, from the several persons who are bound by law to perform such statute duty;" and they fixed the rates of composition, for a cart and three horses, one driver, and one labourer, by the day, at 8*s*. 4*d*. On the 12th *October*, 1819, *Johnson*, the surveyor of the highways of the township of *Hooton*, received from *Crackenthorpe*, the surveyor of the turnpike road, a demand in

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which the surveyor of the turnpike roads could in any case demand from the inhabitants of the township, and much exceeded what was required to put that part of the road lying in the township into complete repair. The turnpike surveyor having returned the assessment to the surveyor of the highways of the township, directed him to collect the sums therein mentioned. Upon a refusal to pay the sum assessed by an inhabitant of the township, two magistrates granted a warrant of distress to levy the same: Held, that the warrant was bad, the magistrates having no jurisdiction whatever; upon the ground that, in order to legalize the demand under the assessment, it ought to have been previously ascertained how many days' statute duty would be required to put the road into complete repair, the composition being demandable only in respect of that number of days' statute duty.

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It seems, that, in order to justify two magistrates in granting an authority to collect a composition in lieu of statute duty, it should be made to appear upon oath, to *both* the magistrates present, that the road can be more effectually repaired by such composition.

It seems, also, that where the composition is to be collected in several townships it ought to appear on the face of the authority itself, that, in the judgment of the magistrates, a composition, in lieu of statute duty, is advisable in each particular township.

writing of a list of the several persons liable to statute duty in that township, and an account of the yearly value of the lands, &c. which they respectively occupied. On the 27th *October*, *Johnson* returned the list required to *Crackenthorpe*, and in that return the plaintiff was mentioned as the owner and occupier of lands and tithes of the yearly value of 1170*l*. The turnpike surveyor then made an assessment upon the whole annual value, of 6*d*. in the pound, the plaintiff's proportion of which was 29*l*. 5*s*. This assessment was made on the assumption that three days' statute duty was required to repair the roads in the township. (*a*) The whole line of road, for the repair of which the composition was required, was forty miles in extent, and passed through twenty-nine townships. At the time the demand was made upon the plaintiff, that part of the turnpike road which passed through the township of *Hooton*, and which was only fifty-nine yards in length, was in perfect repair, and in *March*, 1820, the turnpike surveyor offered to return 26*l*. of the sum levied, and stated at the time, that in the course of that year only 3*l*. had been expended in repairing the road in that township. Mr. *Currie*, the magistrate, who, as well as the defendant *Congreve*, had signed the authority to collect the composition, proved, that he had frequently conversed with *Crackenthorpe* on the necessity of having a composition before the authority was signed, and that he had desired the clerk to the magistrates to come prepared with an authority, that he had expressed his approval of the measure, that he had frequently conversed with *Congreve*, and that they were agreed upon the expediency of the measure; the subject was within their own knowledge, and they therefore signed the authority. Upon these facts, the Chief Justice stated to the jury, that upon the evidence it had not been made to appear by the surveyors of the roads to the justices, that a composition in lieu of statute duty was necessary; that the surveyor ought at all events to have been examined in the presence of both the magistrates, whereas in fact one only had examined him, and communicated the information to the other; and as the result of the enquiry was to affect the property of many persons, it was fit that (if not on oath) it should at least be of a satisfactory nature. The jury found a verdict for the plaintiff. A rule *nisi* for a nonsuit or a new trial having been obtained in last Easter term, first, upon the ground taken at the trial, that the warrant contained *primâ facie* evidence of the jurisdiction of the magistrates, and, therefore, that there ought to have been a nonsuit; secondly, that there was evidence given on the part of the defendant, to shew that it had been made sufficiently to appear to the justices by the surveyor, that a composition was necessary instead of statute duty; and, thirdly, that at all events the defendant *Fielden* was entitled to a verdict, inasmuch as he had not signed the authority to

(*a*) By stat 54 *G*.3. *c*. 109. § 5. *post*, the rate of composition, in lieu of statute duty, for every 20*s*. annual value, is to be a fiftieth part of the sum fixed by the justices as the composition for one day's labour of a cart and three horses and two able men. In this case that sum was 8*s*. 4*d*., of which two-pence was the fiftieth part; and the whole statute duty being six days for every 50*l*. annual value, one shilling in the pound would be the sum required. But by the local turnpike act, the trustees of the turnpike road were entitled to require only three days' statute duty from the several townships through which the road ran, the composition for which would, of course, be sixpence in the pound.

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the surveyor to collect the composition, but merely the warrant, and that he was justified in so doing, by the documents referred to in the warrants. At the time of granting the rule, the Lord C. J. *Abbott* said, that it was important that justices should know the mode in which they are to exercise their authority. At the same time, the opinion of the court was then very strong, that wherever an act of parliament required justices to take certain steps on some matter being made to appear to them, that matter must be made to appear to them on oath.—After argument against, and in support of, the rule, *Abbott* C. J. I am of opinion that enough has not been done to legalize the demand of this specific sum of money from the plaintiff. It appears from the evidence, that there had been an adjudication of two magistrates that a composition should be paid in lieu of statute duty in kind, and also an adjudication by which the composition was fixed to be at the rate of 8*s.* 4*d.* for a cart, three horses, a driver, and a labourer. Before, however, it can be ascertained how much any individual ought to pay as a composition in lieu of statute duty, it must be ascertained in some manner and by some competent authority how many days' labour will be required to repair the road. Now that certainly has not been done here, in distinct terms, in this case. It appears upon the evidence, that the turnpike surveyor having first required, from the surveyor of the highways of the township, a list of the several persons liable to statute duty, made an assessment at the rate of sixpence in the pound upon the whole annual value returned. He seems to have taken it for granted that he was entitled to require from the several townships through which the road passed a composition for the whole statute duty which, by law, he was entitled to demand, whatever the state of the roads might be. Now, I am of opinion, that he had no such right. If there were no composition, the inhabitants of the several townships could only be called upon to do *so many days' statute duty as would be absolutely necessary for the repair of the roads;* and if a composition be called for instead of the statute duty, that composition ought to be an equivalent for that number of days' statute duty.—I think, therefore, in this case, that before the demand was made upon the plaintiff, it ought to have been ascertained, by persons having competent authority for that purpose, that so many days' statute duty would be required to put the road in question into a complete state of repair, and that it ought to have been notified to the inhabitants of the parish or township, that the composition required of them, of sixpence in the pound upon the annual value of their lands, was calculated upon the principle that it would require so many days' statute duty to repair the road. That not having been done in this case, I think, that the justices had no authority whatever to issue the warrant, and consequently that this rule must be discharged.—*Bayley* J. A magistrate is not to be answerable for granting a warrant, if at the time of granting it he has documents before him (which are the acts of other magistrates) from which it appears he was justified in granting the warrant. But if the want of jurisdiction is manifest from all the proceedings before him at the time, then he grants the warrant at his peril. Here, on the face of the original authority to collect the composition, there is a defect, which must have been obvious to the defendants. The composition allowed by law in lieu of statute duty, is in lieu of the statute

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duty required of each particular township, in respect of the roads in that township. The money to be raised, in this case, is not to constitute one general fund for the entire line of turnpike road, but is specifically to be applied for the repair of that part of the road in the particular township. I think, that the magistrates ought, in the exercise of their discretion, on the face of the authority itself, to have shewn, that in their opinion, in each particular township, a composition in lieu of statute duty was advisable. Here, upon the face of this authority, they do not appear distinctly to have exercised any such discretion, because they have only stated that the maintenance and repair of *the said roads* can be more effectually carried on by a composition in money than by a performance of the statute duty in kind. I therefore think, that there was a defect in the authority itself, which Mr. *Fielden* had an opportunity of observing. I also strongly incline to think, though, upon that point, I do not mean to intimate any decided opinion, that it should be made to appear *upon oath* to both the magistrates present that a composition was advisable. The ground, however, upon which I pronounce my judgment in this case is this, that assuming the magistrates to have said, that there ought to have been a composition in this particular township for the repair of the roads there in lieu of statute duty, (which the warrant assumes them to have said,) I think that it should have been made to appear what the *quantum* of the composition was to be. That is in no respect ascertained as it ought to have been. — It has been insisted, that the communication made to *Johnson* by *Crackenthorpe*, that he required a composition calculated at 6*d*. in the pound, was an intimation that he considered the whole of the composition to be requisite for the repair of the roads in that particular township. From the evidence in this case, I do not believe that *Crackenthorpe* ever exercised any judgment upon that point. He seems to have considered the whole sum collected to be one entire fund for the repair of the whole of the roads, and to have meant to collect in each township, to the utmost extent which by law he could collect. I am of opinion, that the communication by *Crackenthorpe* to *Johnson* of itself was not sufficient, but that it ought to have been notified to the inhabitants of the parish or township, that, in the judgment of the surveyor, it was necessary that there should be a composition in lieu of so many days' team work, in order that the parishioners might have had the opportunity of contesting the claim made upon them. That not having been done, I am of opinion, that there was not any evidence before Mr. *Fielden* to justify him in granting this warrant, because there never has been an assessment duly made and duly notified to the inhabitants of the parish. This rule must therefore be discharged. — *Holroyd* J. I think that there was not sufficient evidence before the magistrates to authorize them to grant a warrant. There was no valid assessment so as to bind any person to the payment of any specific amount of composition, the number of days' statute duty required for repairing the road not having been ascertained or notified to the parish; and, therefore, sufficient was not done to legalize this demand made upon the plaintiff. The magistrates, therefore, had no right to grant the warrant. R. D. (*a*)

(*a*) Best J. was absent at chambers.

By stat. 34 *G.*3. c.74. § 4. All which said several sums shall be considered as compositions, and shall be paid to the surveyor at the time the compositions are to be paid under the authority of the aforesaid act, or within ten days after; or in default of such payments the surveyor shall apply to a justice acting for such district, who shall summon such defaulter to appear at some special or petty sessions to be holden for such district, at which two justices at the least shall be present, to show cause why he refused or neglected to pay; and in default of appearance, or if on appearance he shall not make it appear to the satisfaction of such justices that he is poor and indigent, and as such an object deserving relief, such money shall be levied by distress, in like manner as the forfeitures for neglect of statute duty. Provided, that when on application as aforesaid the justices shall discharge any poor and indigent person from payment of such rate or composition money, such person shall at the same time be discharged from any expences in consequence thereof.

34 G.3. c.74. Sums to be deemed compositions, and to be recovered by the surveyor.

§ 5. And whereas it may frequently happen that persons wholly gaining their livelihood by the wages of daily labour, and occupying rateable tenements, by reason of age, sickness, a numerous family or misfortune, may be in poor and indigent circumstances, and it may be expedient in certain cases to discharge such persons from all rates, assessments, or composition whatsoever; it is enacted, that on the application of any such person to two justices at any such petty or special sessions, such justices (having first given notice (No. LIII.) to the surveyor to appear on the part of the parish, township, or place,) shall examine into the situation and circumstances of the person making such application; and if it shall appear to the satisfaction of such justices that he is really poor and indigent and deserving such relief, they may exempt him from all such rates, assessments, or composition.

Justices may discharge poor persons from such rates.

(No. LIII.)

§ 6. Provided, that if it shall appear to the justices, at their special sessions, to be held in the week next after *Michaelmas* quarter sessions, or at any other special or petty sessions, held within the limits of any parish, township, or place, at which two or more justices shall be present, that, from the directions hereinbefore given for the performing and compounding the statute duty, there will be difficulty in procuring the necessary carriage, or a sufficient number of labourers, for the repair of the highways, in any particular parish, township, or place, within their respective limits, without paying high and extravagant prices for the same, it shall and may be lawful for such justices to order (No. XXVII.) and direct the team duty, or so much thereof as they shall think fit, to be performed in kind within every such parish, township, or place, except in respect of such teams as belong to persons who do not occupy lands, tenements, woods, tithes, or hereditaments, of the annual value of 30*l.* within the same; and also to order all such persons as shall gain their living by the wages of daily labour, or such part of them as they shall think fit, to perform six days' labour upon such highways in kind, either by themselves or other sufficient labourers, in case so many days' duty shall be required, upon being paid for such labour the usual and customary wages given to labourers in such parish, township, or place; provided, that if part of such teams or labourers only are required, it shall be directed by the said order of the justices,

Justices may direct team duty to be performed in kind.

(No. XXVII.)

Exception.

Labourers may be ordered to do statute duty on payment of the usual wages.

Persons to perform duty in

34 G.3. c.74.

kind to be drawn by lot.

in some given proportion, as one half, third, or fourth part thereof; and the surveyor shall, in that case, at a public vestry for such parish, township, or place, put the names of all the persons liable by this act to send such teams, into one hat or box, and the names of all the persons liable to perform such labour into another hat or box, and some inhabitant then present shall draw out such number from each as shall be equal to the proportion so ordered by the said justices, and the persons so drawn shall perform such duty in kind for that year; and that if any such order shall be made or continued in the subsequent year, the same method shall be observed, but the names drawn in the preceding year shall not be put into such hat or box; and in every succeeding year such method and regulation shall be observed by such surveyor, as to render the duty so required to be performed in kind as equal amongst the several persons liable thereto as may be; which order of the said justices, so far as the same shall be extended, shall supersede the said power or liberty of compounding, and shall be binding and effectual to all intents and purposes whatsoever, and shall continue in force until it shall be discharged or varied by the justices at some subsequent special sessions for he highways within such limit to be held in the week next after *Michaelmas* quarter sessions; any thing herein contained to the contrary thereof in anywise notwithstanding.

54 G.3. c.109. Rate of composition for persons occupying under 50*l.*; above 50*l.* and under 100*l.*; and so on progressively.

By stat. 54 *G.* 3. *c.* 109. § 5. All persons who are liable under any of the provisions of 13 *G.* 3. *c.* 78., 34 *G.* 3. *c.* 74., and 44 *G.* 3. *c.* 52., to contribute to the repair of the highways by a payment of money in lieu of statute duty, shall contribute thereto in lieu of every day's statute duty, for every twenty shillings of the actual annual value at the time of making the said assessment of the lands, tenements, woods, tithes, and hereditaments which such persons shall respectively occupy in the parish, township, or place *where they reside*, or in any other parish, township, or place, a sum equal to one-fiftieth part of the sum fixed by the justices, at the time and in the manner by this act directed, as the composition for one day's labour of a cart, wain, or carriage, furnished with three horses and two able men, omitting any fractional part of the said sum which does not amount to one farthing; and all persons occupying more than 50*l. per annum* in the parish, township, or place wherein they reside, or in any other parish, township, or place, and less than 100*l. per annum*, shall contribute to the repairs of the highways in lieu of every day's statute duty, for every twenty shillings of the actual annual value at the time of making the said assessment of the lands, tenements, woods, tithes, and hereditaments which such persons shall respectively occupy over and beyond the said sum of fifty pounds *per annum*, and under one hundred pounds, a sum equal to one-fiftieth part of the sum fixed by the said justices, at the time and in the manner by this act directed, as the composition for one day's labour of a cart, wain, or carriage, furnished with three horses and two able men, omitting any fractional part of the said sum which does not amount to one farthing; and so on progressively for every twenty shillings of the actual annual value of the lands, tenements, woods, tithes, and hereditaments which they shall respectively occupy over and beyond every additional 50*l. per annum;* and the said sum or sums shall be paid in the same manner and within the

same period, and subject to the same regulations and provisions, as are now by law established for enforcing the payment of composition in lieu of statute duty.

By stat. 54 *G.* 3. *c.* 109. § 6. Every person who shall keep a coach, post chaise, chair, or other wheel carriage, and not keep a team, draught, or plough, nor occupy 50*l.* *per annum* in the parish, township, or place where he resides, shall pay to the surveyor or surveyors, in respect of every day's statute duty, for every horse which he or she shall use in drawing such carriage, such a sum as the justices shall, at the time and in the manner by this act directed, fix as the composition for one day's work of a horse; or shall, at the option of the surveyor or surveyors, pay in lieu of every day's statute duty, for every 20*s.* of the actual annual value of the lands, tenements, woods, tithes, and hereditaments, which he or she shall respectively occupy, a sum equal to one-fiftieth part of the sum fixed by the justices, at the time and in the manner by this act directed, as the composition for one day's labour of a cart, wain, or carriage, furnished with three horses and two able men, omitting any fractional part of the said sum which does not amount to one farthing; and the said sum or sums shall be paid in the same manner, and within the same period, and subject to the same regulations and provisions, as are now by law established for enforcing the payment of compositions in lieu of statute duty.

54 G. 3. c. 109. Persons keeping carriages, though not occupying to the amount of 50*l.*, liable to composition.

By stat. 13 *G.* 3. *c.* 78. § 40. If any person who shall keep a team, draught, or plough, and shall not occupy lands, tenements, woods, tithes, or hereditaments, to the value of 30*l.* *per annum*, in the parish, township, or place, where he shall reside, but shall in part maintain his horses and beasts of draught used in such team upon or from lands which he shall occupy in one or more adjacent parish or parishes, it shall and may be lawful for the said justices, at some special sessions, to mitigate and reduce the duty or composition so required to be performed or paid by such person or persons, in such manner, and to such sum, as they shall think just and reasonable.

13 G. 3. c. 78. Justices may mitigate the composition, where a person maintains his team partly from lands in another parish.

§ 41. Provided, that the said surveyor of every parish, township, or place, shall on some *Sunday* in *November* in every year, cause ten days' notice (No. XXVI.) at the least to be given in the church or chapel of such parish, township, or place; and if there be no church or chapel, or no service performed therein, then at the most public place there, and repeat the like notice in such church, chapel, or place, on the next succeeding *Sunday*, of the time and place when and where the persons permitted under the authority of this act, and inclined to compound for the said duty, in manner aforesaid, may signify to such surveyor their intention to compound; and all and every person or persons signifying the same, who shall then, or within the space of one calendar month afterwards, pay to such surveyor the composition authorised and allowed by this act, shall be discharged from the performance of such duty, which composition money shall be employed by the surveyor for the use of the highways; and that no composition shall be permitted, unless the same shall be paid at the day or within the time aforesaid; but in cases where the occupation of any lands, tenements, woods, tithes, or hereditaments, shall be changed, or any new occupant or inhabitant shall come to reside in such parish, township, or place, after the time appointed for such composition,

Surveyors to give notice of the time and place for compounding. (No. XXVI.)

How the composition money shall be paid and employed.

13 G.3. c.78. then the person or persons occupying such lands, tenements, woods, tithes, or hereditaments, or so residing in such parish, township, or place, shall be allowed to compound in manner aforesaid; provided he, she, or they, shall pay the said composition money to the said surveyor within fourteen days after he, she, or they, shall enter upon such lands, tenements, or hereditaments, or shall come to reside in such parish, township, or place; and every tenant or occupier of any lands, tenements, woods, tithes, or hereditaments, who intends to quit the possession thereof within six calendar months from the time fixed for making such composition, shall and may compound for half the duty hereby required, and the succeeding tenant or occupier shall and may, in that case, compound or perform the duty in kind for the other half thereof; and if the surveyor shall receive from any person or persons a composition for more duty than shall be required from the other inhabitants and occupiers within the same parish, township, or place, for the same year, he shall repay such extraordinary composition money to such person or persons, so as to bring the duty to an equality amongst all such inhabitants and occupiers.

Persons keeping a draught or plough, and no carriage, to pay for the horses or oxen drawing them.

§ 42. Provided, that in every parish, township, or place, where any person shall keep a draught or plough, and no carriage, he shall pay to the surveyor the sum of one shilling for every horse, or pair of oxen or neat cattle, used in such draught or plough, for every day's statute duty on the day such duty is required to be performed, or pay according to the rate aforesaid for the lands, tenements, woods, tithes, and hereditaments, which he shall occupy in such parish, township, or place, at the option of the surveyor.

Where the surveyor receives composition money due to the turnpike roads, he shall pay it to the treasurer, to be laid out for the use of the turnpike road within the parish, &c. where it is collected.

§ 44. And whereas by several acts of parliament concerning turnpike roads, a certain part of the duty called *statute duty* is or may be directed to be performed on such roads, and it may happen in some places, that the several persons liable thereto may have compounded for the same; it is enacted, that in all such cases, the surveyor of the highways of the parish, township, or place, where such composition shall have been made, shall pay to the treasurer or surveyor of such turnpike roads a certain part of the composition money so received, to be proportioned according to the number of days' duty which such person or persons was or were liable to perform on such turnpike road; which money shall be laid out and expended on such part of the said turnpike road as lies within the parish, township, or place, from which it was received, and not elsewhere; and if such surveyor of the highways shall refuse or neglect to pay to the treasurer or surveyor of such turnpike road such part of the said composition-money so received by him, within twenty days after he shall have received the same, upon demand made by such treasurer or surveyor, the same shall and may be levied upon the goods and chattels of such surveyor, in such manner as penalties and forfeitures are by this act authorised to be levied.

§ VI. Working.

[13 G. 3. c. 78. § 25. 37. 43.—34 G. 3. c. 74. § 2.—54 G. 3. c. 109. § 7, 8, 9.]

13 G. 3. c. 78. Justices may order what highways shall be first repaired. (No. XXIX.)

By stat. 13 *G*. 3. *c*. 78. § 25. The justices of the peace, at any special sessions to be held by virtue of this act, may, by writing, (No. XXIX.) under their hands and seals, order and appoint those highways (not being turnpike road), which in their opinion do most want repair within their jurisdiction, to be first amended, and at what time and in what manner the same shall be amended; according to which order, if such there be, all and singular the respective surveyors of the said highways are hereby required to proceed within their respective liberties.

Inhabitants may fix certain times in which the statute duty shall not be called forth.

§ 43. And, in order to prevent as much as possible any inconvenience to the persons liable to perform statute-duty, it is enacted, that it shall and may be lawful for the inhabitants of every parish, township, or place, at some vestry, or other public meeting or meetings, to be held pursuant to this act, to appoint three months in every year, within which no statute duty shall be performed; *videlicet*, one month in the spring, to be called the *seed month*; one month in the summer, for the hay harvest; and one other month in the summer, for the corn harvest: provided, that notice in writing (No. XXVIII.) be given of the times so appointed to the surveyor of such parish, township, or place respectively, and also to the surveyor of every turnpike road lying within the same, within three days after every such meeting, and fourteen days at least before the beginning of each of such months. (No. XXVIII.)

What notice to be given for performing the duty. (No. XXV.)

§ 37. Every such surveyor shall, from time to time, give to, or cause to be left at the house or usual place of abode of every person or persons so liable to perform such duty or labour, as in this act directed, four days' notice (No. XXV.) at the least of the day, hour, and place, upon which each of the said day's duty shall be required to be performed; and every person or persons making default in finding and sending each wain, cart, or carriage, furnished as aforesaid, and such able men with the same, as herein required, or in performing the said duty at the time and place, and in the manner by this act directed, shall, for every such default or neglect in sending such wain, cart, or carriage, with such men as aforesaid, forfeit the sum of 10*s*.; and for every default in sending every cart with one horse and one man, 3*s*.; and for not sending every cart with two horses and one man, 5*s*.: and every person or persons making default in sending any such labourer, and every person making default in performing such labour at the time and place and in the manner directed by this act, or in paying such composition money for the same, as herein mentioned, shall for every such neglect forfeit the sum of 1*s*. 6*d*.; all which forfeitures shall be applied for the use of the highways within the parish, township, or place, where the same shall arise; and the said surveyor shall fairly and equally demand and require such duty and labour from every person or persons liable to perform the same, according to the directions of this act, without favour or partiality to any person or persons whomsoever; and if in any parish, township, or place, it shall not be necessary to call forth the whole duty in any year, it shall be abated in a just and equal

Forfeitures for every default or neglect.

Application of the forfeitures.

The surveyor to call forth the duty fairly and equally.

When the whole duty is not necessary.

13 G.3. c.78. proportion amongst all persons liable to the same; and the said surveyor may and shall, and he is hereby required, with all convenient speed, after default made in performance of such duty or labour as aforesaid, to proceed for the recovery of the penalties or forfeitures hereby inflicted for the same respectively, in manner hereinafter directed, so that the same may be recovered before he makes up his accounts in the manner directed by this act.

34 G.3. c.74. Tools to be brought.

By stat. 34 *G.* 3. *c.* 74. § 2. All such persons as aforesaid shall respectively bring with them such shovels, spades, picks, mattocks, and other tools and instruments, as are useful and proper for the purposes aforesaid.

Manner of working.

And all the said persons and carriages shall diligently perform the work and labour to which they shall be appointed by the surveyor for eight hours in every of the said days within such parish, township, or place, or in getting and carrying materials in and from any other parish, &c., to be employed in the repair of the highways of the parish, &c., for which they shall be required to perform such duty and labour as aforesaid. *Id.*

Penalty of not working according to the direction of the surveyor.

If any person sending a team as aforesaid shall not send a sufficient labourer besides the driver (except as before mentioned), or if any such labourer or driver, or the driver of any cart, shall refuse to work and labour according to the direction of the surveyor, or if any driver shall refuse to carry proper and sufficient loads, the surveyor may discharge every such team, cart, or labourer, and recover from the owner of every such team or cart the forfeiture which every such person would have incurred in case no such team, cart, or labourer respectively had been sent. *Id.*

54 G.3. c.109. Enforcing performance of statute duty, and for levying forfeitures and arrears.

By stat. 54 *G.* 3. *c.* 109. § 7. All persons who shall refuse or neglect to perform any part of their statute duty in kind, on being regularly summoned by the surveyor for that purpose, shall forfeit and pay a sum equal to twice the amount of the composition for such statute duty as they shall have so neglected or refused to perform, according to the rates fixed by the justices under the provisions of this act; and the said persons shall also be liable to perform the said statute duty which they have so neglected or refused to perform, either in the same or in the following year; the payment of such forfeitures, and the arrears of such statute duty, to be enforced and applied to the benefit of the highway or turnpike road, as the case may be, to which the original neglected duty was due or owing, by the surveyor or surveyors for the time being, and under the same regulations and in the same manner as other forfeitures may be levied, and statute duty may in other cases be enforced, by any of the provisions of any of the said hereinbefore recited acts.

Justices of cities to execute act.

§ 8. The justices of the peace and magistrates of all cities, corporations, boroughs, precincts, liberties, and other separate jurisdictions, are hereby authorized and required to put in execution every part of this act within their respective jurisdictions, so far as the provisions thereof are applicable, in as full and ample a manner as the justices of any county or of any division thereof.

Not to alter former acts but where expressly amended.

§ 9. Provided, that nothing in this act contained shall alter the several hereinbefore recited acts, nor any act or acts passed subsequently to the said hereinbefore recited acts, regarding the highways or turnpike roads in *England* and *Wales*; but that the same, where not expressly amended or altered by this act, shall,

remain in as full force as at the time of passing this act; and that all their powers, authorities, provisions, regulations, and forms, shall be applicable, not only to the carrying those acts respectively into execution, but also this act, so far as the same are adapted thereto, and are not expressly varied or altered by this act, in as full and ample a manner as if the same had been re-enacted in this act. 54 G.3. c.139.

§ VII. Materials how to be procured.

[13 G.3. c. 78. § 27, 28, 29. 31, 32, 33. 49.]

13 G.3. c.78. Materials, where and in what manner to be taken by surveyors.

By stat. 13 *G*.3. *c*. 78. § 27. For the better repairing, and keeping in repair, the said highways, and providing of materials for that purpose, it is enacted, that it shall and may be lawful to and for every surveyor, to be appointed as aforesaid, to take and carry away, or cause to be taken and carried away, so much of the rubbish or refuse stones, of any quarry or quarries, lying and being within the parish, township, or place, where he shall be surveyor (except such as shall have been got by the surveyor of any turnpike road), without the licence of the owner or owners of such quarries, as they shall judge necessary for the amendment of the said highways, but not to dig or get stone in such quarry without leave of the owner thereof; and also that it shall and may be lawful for every such surveyor, for the use aforesaid, in any waste land or common ground, river, or brook, within the parish, township, or place, for which he shall be surveyor, or within any other parish, township, or place, wherein gravel, sand, chalk, stone, or other materials, are respectively likely to be found, (in case sufficient cannot be conveniently had within the parish, township, or place, where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish, township, or place,) to search for, dig, get, and carry away the same, so that the said surveyor doth not thereby divert or interrupt the course of such river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of 100 feet above or below any bridge, nor within the like distance of any dam or wear; and likewise to gather stones lying upon any lands or grounds within the parish, township, or place, where such highway shall be, for such service and purpose, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, without making any satisfaction for the said materials; but satisfaction shall be made for all damages done to the lands or grounds of any person or persons, by carrying away the same, in the manner hereinafter directed for getting and carrying materials in inclosed lands or grounds; but no such stones shall be gathered without the consent of the occupier of such lands or grounds, or a licence (Nos. XXIII. and XXIV.) from a justice of peace for that purpose, after having summoned such occupier to come before him, and heard his reasons, if he shall appear and give any, for refusing his consent.

Power to gather stones, without making satisfaction; but satisfaction to be made for damages done by carrying them away. (No.s XXIII. XXIV.)

§ 28. Provided, that nothing in this act contained, relative to the gathering or getting of stones shall extend to any quantity

Not to extend to stones

13 G.3. c.78.

thrown up by the sea, called *Beach.*

If sufficient materials cannot be found in waste lands, &c. the surveyor may take them from several or inclosed lands or grounds, (No. XXIII.)

making satisfaction to the owners.

In what manner satisfaction is to be settled.

Clay may be got and burnt into materials for repairing the highways.

of land (being private property) covered with stones thrown up by the sea, commonly called *Beach.*

§ 29. It shall be lawful for every such surveyor, for the use aforesaid, to search for, dig, and get sand, gravel, chalk, stone, or other materials, if sufficient cannot conveniently be had within such waste lands, common grounds, rivers, or brooks, in and through any of the several or inclosed lands or grounds of any person or persons whomsoever, within the parish, township, or place, where the same shall be wanted, or by licence (No. XXIII.) from two justices of the peace, at a special sessions, within any other parish, township, or place, adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish, township, or place, where such highways lie, or in the waste lands, or common grounds, rivers, or brooks, of such adjacent parish, township, or place, and that a sufficient quantity of materials will be left for the use of the parish, township, or place, where the same shall be, (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation,) and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways; the said surveyor making such satisfaction for the damage to be done to such lands or grounds by the getting and carrying away the same as shall be agreed upon between him and the owner, occupier, or other person interested in such lands or ground respectively, in the presence, and with the approbation, of two or more substantial inhabitants of such parish, township, or place; and in case they cannot agree, then such satisfaction and recompence shall be settled and ascertained by order of one or more justice or justices of the peace of the limit where such land or ground shall lie; and in such places, where, from the want of other materials, burnt clay may be substituted in the place thereof, it shall and may be lawful for the surveyor to dig clay in such places as he is hereby authorized to dig chalk or gravel, and to dry the same upon the lands adjoining, and to burn the same upon any waste lands or common grounds, and to carry such clay in such manner as other materials are allowed to be carried by this act, upon making such satisfaction for the damages within the several inclosed lands or grounds where such clay shall be placed or carried, as herein directed with regard to other materials: provided, that when the owner of any such inclosed lands shall have occasion for any such materials lying within the same, for the repair of any highway, or other roads or ways upon his estate, or which he shall be under obligation to repair, and shall give notice to such surveyor that he apprehends there will not be sufficient for those purposes, and also for the use of the public highways; then, and in every such case, the surveyor shall not be permitted to dig or take such materials without the consent of such owner, or an order of two justices of the peace, after having summoned and heard the said owner or occupier, or his steward or agent; which justices are hereby authorized to enquire into the nature and circumstances of the case, and to permit or restrain such power, in such manner, and under such directions, as to them shall seem just.

The sufficiency of the compensation for the materials, or damage done in the taking them, or carrying them away, can only be settled and ascertained before the justices according to the directions of the act, and cannot be questioned in an action of trespass: if a plaintiff can show that a new road was made over his lands maliciously or wantonly by the surveyor, and not for the necessary or convenient carriage of the materials over the land, he would not be concluded by the amount offered to him, and the surveyor would not, it seems, in such a case be protected by the act. *Boyfield* v. *Porter*, 13 *East*, 200.

13 G. 3. c. 78. Sufficiency of compensation for materials or damage done in taking or carrying them away.

§ 32. Provided, that no stone, gravel, or materials to be dug for the use of any other parish, township, or place, than that wherein the same are found, shall be removed or carried from the place where they shall be so dug, at any other time than between the first of *April* and the first of *November*, or in the time of hard frost in the winter season.

§ 33. If any person shall dig or cause to be dug materials for the highways, contrary to the directions of this act, whereby any bridge, mill, building, dam, highway, ford, mines, or tin works, may be damaged or endangered, he shall forfeit for every such offence any sum not exceeding 5*l.* nor less than 20*s.* at the discretion of the court or justices before whom complaint shall be made.

§ 49. And where a sufficient quantity of stone, gravel, chalk, or other materials cannot be provided and carried by the labourers and teams within any parish, township, or place, the surveyor shall, and is hereby required to contract for the getting and carrying thereof (in presence of the assistant, if any such be appointed,) at a meeting to be held for that purpose; of which ten days' notice in writing shall be given, by fixing the same upon the door of the church or chapel of such parish, &c., or if there be no church or chapel, at the most public place there; which notice shall specify the work to be done, and the time and place for letting thereof; and if the surveyor shall have any part, share, or interest directly or indirectly, in any such contract, or in any other contract or bargain for work or materials to be made, done, or provided, upon, for, or on account of any of the highways, roads, bridges, or other works whatsoever, under his care or management, or shall, upon his own account, directly or indirectly, let to hire any team, or sell or dispose of any timber, stone, or other materials, to be used or employed in making or repairing such roads, bridges, or other works, as aforesaid, (unless a licence, in writing, for the sale of any such materials, or to let to hire any such team, be first obtained from some justice of the peace within that limit,) he shall forfeit for every such offence, the sum of 10*l.*, and be for ever after incapable of being employed as a surveyor with a salary under the authority of this act.

If the surveyor has a share in any contract, or shall let to hire any team, or sell or dispose of any timber, stones, &c. without licence from a justice of peace, he shall forfeit 10*l.* and be incapable of being surveyor with a salary.

§ 31. If any surveyor, or person employed by him, shall, by reason of the searching for, digging, or getting any gravel, sand, stones, chalk, clay, or other materials for repairing any highways, make any pit or hole in such lands, rivers, or brooks as aforesaid, wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired, during such time as the said pit or hole shall continue open; and within three days after such pit or hole shall be opened or made, where no gravel, stones, or materials, shall be found, cause

If the surveyor shall make pits or holes in getting materials, he shall cause them to be filled up, or fenced off.

13 G. 3. c. 78. the same to be forthwith filled up, levelled, and covered with the turf or clod which was dug out of the same; and where any such materials shall be found, within 14 days after having dug up sufficient materials in such pit or hole, cause the same to be filled up, sloped down, or fenced off, and so continued; and every surveyor shall, within 20 days after he shall be appointed to that office, cause all the said pits and holes which shall then be open, and not likely to be further useful, to be filled up or sloped down, in manner aforesaid; and if they are likely to be further useful, he shall secure the same by posts and rails, or other fences, to prevent accidents to persons or cattle; and in case such surveyor, person or persons, shall neglect to fill up, slope down, or fence off, such pit or hole, in manner and within the time aforesaid, he or they shall forfeit the sum of 10*s*. for every such default; and in case such surveyor, person or persons, shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of six days after he or they shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands, as aforesaid, and such neglect and notice shall be proved upon oath before one or more of the said justices of the peace, such surveyor, person or persons, shall forfeit and pay any sum not exceeding 10*l*., nor less than 40*s*., for every such neglect; to be determined and adjudged by such justice or justices, and to be laid out and applied in the fencing off, filling up, or sloping down, such pit or hole, and toward the repair of the roads in the parish, township, or place, where the offence shall be committed, in such manner as the said justice or justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied.

And in like manner all those pits, &c. already made;

or forfeit 10*s*. for every neglect; and for every neglect after notice given.

§ VIII. Removing Obstructions and Annoyances; Carts, &c. — Drivers misbehaving.

[1 G. 1. st. 2. c. 57. § 8. — 24 G. 3. c. 43. § 8, 9. — 30 G. 2. c. 22. § 7. 11, 12, 13, 14, 15. — 13 G. 3. c. 78. § 6, 7, 8, 9, 10, 11, 12, 13, 14. 59, 60. 62, 63.]

Annoyances in general.

There is no doubt, but that all injuries whatsoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which will render it less commodious to the king's people, are public nuisances at common law. 1 *Haw. c.* 76. § 48.

By the common law any one may abate a nuisance to a highway, and remove the materials, but not convert them to his own use. 1 *Haw. c.* 76. § 61.

Also it seemeth that an heir may be indicted for continuing an encroachment, or other nuisance to a highway, begun by his ancestor; because such a continuance thereof amounts in the judgment of the law to a new nuisance. *Id.*

To suffer the ditches adjoining to a highway to be foul, by reason whereof it is impaired, is a nuisance also at common law. 1 *Haw. c.* 76. § 50.

And it seemeth clear that it is a nuisance at common law to suffer the boughs of trees growing near the highway to hang over the road in such a manner as thereby to incommode the passage. *Ib.* and 3 *Bac. Abr.* 497. Boughs of trees.

And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the same; and it seems clear that any person may justify the lopping such trees, so far as to avoid the nuisance. 1 *Haw. c.* 76. § 52.

A gate erected in a highway is a common nuisance, because it interrupts the people in that free and open passage which they before enjoyed, and were lawfully entitled to; but where such a gate has continued time out of mind, it shall be intended that it was set up at first by consent, on a composition with the owner of the land on the laying out the road, in which case the people had never any right to a freer passage than what they still enjoy. *See* § I. *of this title*, and 1 *Haw. c.* 75. § 9. 12. *c.* 76. § 50. *Com. Dig.* (A. 3.) A gate.

By stat. 13 *G.* 3. *c.* 78. § 6. No tree, bush, or shrub shall be permitted to stand or grow in any highway within the distance of 15 feet from the centre thereof, (except for ornament or shelter to the house, building, or court yard of the owner thereof,) or hereafter be planted within the distance aforesaid; but the same shall respectively be cut down, grubbed up, and carried away, by the owner or occupier of the land or soil, within ten days after notice to him or his agent by the surveyor; on pain of forfeiting for every neglect the sum of 10*s*. 13 G. 3. c. 78. No tree, bush, or shrub, allowed to stand within 15 feet of the centre of the highway.

§ 7. The possessors of the land next adjoining to every highway shall cut, prune, or plash their hedges; and also cut down or prune and lop the trees growing in or near such hedges or other fences (except those trees planted for ornament or shelter as aforesaid), in such manner that the highways shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such highway to the damage thereof. And if such possessor shall not, within ten days after notice (No. XI.) given by the surveyor for that purpose, cut, prune, and plash such hedges, and cut down, or prune and lop such trees, the surveyor may and he is hereby required to complain (No. XLVIII.) to a justice, who shall summon (No. XLIX.) the possessor of the said lands to appear before the justices at some special sessions for that limit, (see Nos. XLIV. XLV.) to answer to the said complaint; and if it shall appear to the justices at such special sessions, that such possessor had not complied with the requisites of this act, it shall and may be lawful to the said justices, upon hearing the surveyor and possessor of such land or his agent, (or, in default of appearance, on having due proof of the service of such summons,) to order (No. XLVII.) such hedges to be cut, plashed, and pruned, and such trees to be cut down or pruned, in such manner as may best answer the purposes aforesaid. And if the possessor of such lands shall not obey such order within ten days after it shall have been made, and he shall have had notice thereof, he shall forfeit 2*s*. for every 24 feet in length of such hedge which shall be neglected to be cut and plashed, and 2*s*. for every tree which shall be neglected to be cut down or pruned and lopped; and the surveyor shall cause the same to be done, To be cut and pruned. (No. XI.) (No. XLVIII.) (No. XLIX.) (No. XLIV.) (No. XLVII.)

13 G. 3. c. 78. and the possessor shall pay, over and above the penalties, the
(No. XII.) charges and expences (No. XII.) of doing the same; or, in default thereof, such charges and expences shall be levied together with the said forfeitures, upon his goods and chattels, by warrant from
(No. XXXVI.) a justice, (No. XXXVI.) in such manner as is authorized for forfeitures incurred by virtue of this act.

§ 13. Provided, that no person shall be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of *September* and the last day of *March*; and that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be enlarged as hereinafter mentioned, or to cut down or grub up any oak trees growing in such highway or in such hedges, except in the months of *April*, *May*, or *June*, or any ash, elm, or other trees, in any other months than *December*, *January*, *February*, or *March*.

Ditches, drains, and water-courses.

§ 8. Ditches, drains, or watercourses, of a sufficient depth and breadth for keeping all the highways dry, and conveying the water from the same, shall be made, scoured, cleansed, and kept open, and sufficient trunks, tunnels, plats, or bridges shall be made and laid, where any cart-ways, horseways, or footways lead out of the said highways into the lands adjoining thereto, by the occupier of such lands; and every person who shall occupy any lands adjoining to or near the highway, through which the water hath used to pass from the said highway, shall open, cleanse, and scour the ditches, watercourses, or drains for such water to pass without obstruction; and every person making default in any of the matters aforesaid, after ten days' notice given by the surveyor,
(No. L.) shall forfeit 10*s*. (No. L.)

Where the old ditches, gutters, &c. are insufficient, new ones to be made.

§ 14. Where the ditches, gutters, or watercourses, which have been usually made, or which are herein directed to be made, cleansed, and kept open, shall not be sufficient to carry off the water which shall lie upon and annoy the highways; in such case it shall be lawful for the surveyor, by order of one justice,
(No. XIII.) (No. XIII.) to make new ditches and drains in and through the lands adjoining or lying near to such highways, or in and through any other lands, if it shall be necessary, for the more easy and effectual carrying off such water from the said highways, and also to keep such ditches, gutters, or watercourses scoured, cleansed, and opened; and the surveyors and their workmen may go upon the said lands for that purpose: Provided, that the said surveyors make proper trunks, tunnels, plats, bridges, or arches, over such ditches, gutters, or watercourses, where the same shall be necessary, for the convenient use and enjoyment of the lands through which the same shall be made, and from time to time keep the same in repair; and do also make satisfaction to the owner or occupier of such lands, which are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in several or inclosed grounds are directed to be settled and paid.

Persons laying stone, timber straw, &c. in any highway, or soil out of ditches, &c.

§ 9. If any person or persons shall lay, in any highway, any stone, timber, straw, dung, or other matter, or in making, scouring, or cleansing, the ditches or watercourses, shall permit the soil or earth dug out of such ditches, drains, or watercourses, to remain in such highway, in such manner as to obstruct or pre-

judice the same, for the space of five days after notice (No. XI.) thereof given by the surveyor of the highways; every person or persons offending in any of the said cases shall, for every such offence, forfeit and pay the sum of 10*s*.

13 G. 3. c. 78.

(No. XI.)

shall, for every offence, forfeit 10*s*.

§ 10. And if any stone or timber, or any hay, straw, stubble, or other matter, for the making of manure, or on any other pretence whatsoever, not tolerated by this act, shall be laid in any highway, within the distance of fifteen feet from the centre thereof, and shall not, within five days after notice given by the surveyor, or some person aggrieved thereby, be removed, it shall and may be lawfu. for the owner or possessor of the lands adjacent or any other person or persons whomsoever, by order from some justice of peace, to clear the said highway, by removing the said stone, timber, hay, straw, dung, or other matter, and to have, take and dispose of the same, to his and their own use.

Stone, timber, hay, straw, &c. laid within 15 feet of the centre of the highway, and not removed in 5 days after notice given, the owner of the adjacent lands may remove and dispose of the same to his own use.

§ 63. If any person shall incroach by making or causing to be made any hedge, ditch, or other fence on any highway not being turnpike road, within the distance of 15 feet from the middle or centre thereof; or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands shall turn his plough in or upon any land or ground, within the distance of 15 feet from the middle or centre of any highway, where the breadth of such highway is formed and marked or described with certainty, and doth not exceed in breadth 30 feet, he shall forfeit 40*s*. for every such offence to such person who shall make information of the same; and the surveyor may cause such hedge, ditch, or fence to be taken down or filled up, at the expence of the person to whom the same shall belong; and one justice, on proof to him made upon oath, may levy as well the expences of taking down such hedges, as the said penalty, by distress, in such manner as distresses for forfeitures are directed by this act.

Penalty for incroaching on the highway.

Incroachment may be taken down by the surveyor.

§ 12. The surveyors of the highways shall, at all such times and seasons as they shall judge proper, view all the common highways, trunks, tunnels, plats, hedges, ditches, banks, bridges, causeways, and pavements, within the parish, township, or place, for which they shall be appointed surveyors; (No. XLVI.) and in case they shall observe any nuisances, incroachments, obstructions, or annoyances, made, committed, or permitted, in, upon, or to the prejudice of them, or any of them, contrary to the directions of this act, they shall, from time to time, as soon as conveniently may be, give, or cause to be given, to any person or persons doing, committing, or permitting the same, personal notice, or notice in writing, (No. XI.) to be left at his, her, or their usual place or places of abode, specifying the particulars wherein such nuisances, defaults, obstructions, or annoyances, consist; and if such nuisances, obstructions, or annoyances shall not be removed, and the ditches, drains, gutters, and watercourses aforesaid effectually made, scoured, cleansed, and opened, and such trunks, tunnels, plats, and bridges, made and laid, and such hedges properly cut and pruned, within twenty days after such notice of the same respectively given as aforesaid, then the said surveyors shall be and they are hereby fully authorized and impowered, forthwith to remove such nuisances, obstructions, or annoyances, and open, cleanse, and scour such ditches, gutters,

Surveyors' duty on taking a view of the condition of the highways, &c. within the district, in respect of nuisances, obstructions, &c.

(No. XLVI.)

(No. XI.)

If the offender does not remove such nuisance, &c. after notice, the surveyor shall do it, and the offender shall pay the charges thereof.

13 G.3. c.78. and watercourses, and make or amend such trunks, tunnels, plats, or bridges, and cut and prune such hedges, for the benefit and improvement of the said highways, to the best of their skill and judgment, and according to the true intent and meaning of this act; and the person or persons so neglecting to make, or open and cleanse such ditches, gutters, or watercourses, or to cut or prune such hedges, during the time aforesaid, after such notice given, shall forfeit, for every foot in length which shall be so neglected, the sum of one penny; and the said surveyors shall be reimbursed what charges and expences they shall be at in removing such nuisances, obstructions, or annoyances, and making or opening, cleansing and scouring, such ditches, gutters, and watercourses, and in making or amending such trunks, tunnels, plats, or bridges, and in cutting and pruning such hedges respectively, by the person or persons who ought to have done the same, over and above the said forfeiture; and in case such person or persons shall, upon demand, refuse or neglect to pay the said surveyor his charges and expences occasioned thereby respectively, and also the said forfeiture of one penny *per* foot, then the said surveyor shall apply to any justice of the peace, and, upon making oath before him of notice being given to the defaulter in manner aforesaid, and of the said work being done by such surveyor, and of the expences attending the same, the said surveyor shall be repaid by such person or persons all such his said charges (No. XII.) as shall be allowed to be reasonable by the said justice; or, in default of payment thereof on demand, the same shall be levied in such manner as the penalties and forfeitures hereby inflicted are directed to be levied.

(No. XII.)

Carriages or implements of husbandry left in the highway.

§ 11. If any person shall wilfully set, place, or leave any waggon, cart, or other carriage, or any plough or instrument of husbandry in any highway, (except only with respect to such waggon, cart, or carriage, during such reasonable time as the same shall be loading or unloading, and standing as near the side of such highway as conveniently may be,) so as to interrupt or hinder the free passage of any other carriage, or of H. M.'s subjects; every person so offending shall forfeit 10*s*. for every such offence.

1 G.1. st.2. c.57.

Drivers of carriages misbehaving.

By stat. 1 *G.*1. *st.* 2. *c.*57. § 8. If any person, driving any cart, dray, car, or waggon, in the streets of *London*, shall ride upon the same, not having some other person on foot to guide the same, he shall on conviction before the alderman of the ward, or a justice of the peace, on oath of one witness, forfeit 10*s*. by distress and sale; half to the informer, and half to the poor; and in default of payment, to be sent to the house of correction, there to be kept to hard labour for three days.

24 G.2. c.43.

And by stat. 24 *G.*2. *c.*43. § 8, 9. If any carter, drayman, carman, waggoner, or other driver, shall ride upon his cart, &c. in *London*, or within ten miles thereof, not having some other person on foot to guide the same, he shall, on the like conviction, forfeit 10*s*. in case such driver shall not be the owner of such carriage; and in case he be the owner, then any sum not exceeding 20*s*., to be recovered, levied, and applied, as by the aforesaid act of the 1 *G.*1. *st.* 2. *c.*57. And any person, though not a peace officer, may stop and apprehend such offender, and carry him as soon as conveniently may be before a justice; and if any person shall resist, abuse, or prevent any person endeavouring to

apprehend such offender, or when he is apprehended, shall rescue, or endeavour to rescue him, he shall forfeit 20*s*. in like manner. 24 G.2. c.43.

By stat. 30 *G*.2. *c*.22. § 7. 12. If the driver of any carriage within *London* or *Westminster*, or in any public street or common highway within the bills of mortality, shall by negligence or wilful misbehaviour interrupt the free passage of H. M.'s subjects, he shall on conviction by confession or oath of one witness, before one justice, forfeit any sum not exceeding 20*s*. or be committed to the house of correction, or some other prison of the place where the offence shall have been committed, or the offender shall have been apprehended, there to be kept to hard labour for any time not exceeding one calendar month. The said forfeiture to be levied by distress by warrant of such justice; and to be paid half to the prosecutor, and half to the overseers for the use of the poor of the parish or place where the offence shall be committed, or the offender shall be apprehended; and if there be no overseer, then to some other officer for the use of the poor as aforesaid. 30 G.2. c.22. Penalty.

§ 13. Any person, who shall see any offence committed against this act, may by authority of this act, and without any other warrant, apprehend the offender, and shall with all convenient speed convey or deliver him to a constable or other peace officer of the place where the offence shall be committed, or the offender shall be apprehended, in order to be conveyed before a justice, there to be dealt with according to law.

§ 11. And if he shall refuse to discover his name and place of abode to the justice before whom he shall be brought, he shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction of the place where the offence shall be committed, there to remain until he shall declare his name and place of abode to the said justice, or to some other justice of such place.

§ 14. Any person shall be admitted to be an evidence, notwithstanding his being an inhabitant of the place where the offence shall be committed. Inhabitants witnesses.

§ 15. Provided, that persons punished by this act shall not be punished by any other law.

And more generally, by stat. 13 *G*.3. *c*.78. § 60. by which, after reciting that, whereas many bad accidents happen, and great mischiefs are frequently done upon the streets and highways, by the negligence or wilful misbehaviour of persons driving carriages thereon; it is enacted, that if the driver of any cart, car, dray, or waggon, shall ride upon any such carriage in any street or highway, not having some other person on foot or on horseback to guide the same (such carriages as are conducted by some person holding the reins of the horse or horses drawing the same excepted); or if the driver of any carriage whatsoever on any part of any street or highway shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such street or highway, or shall quit the highway and go on the other side of the hedge or fence inclosing the same; or wilfully be at such distance from such carriage whilst it shall be passing upon such highway, that he cannot have the direction and government of the horses or cattle drawing the same; or 13 G.3. c.78. Drivers of carriages punishable for misbehaviour or negligence, in order to prevent accidents.

13 G.3. c.78.

shall, by negligence or wilful misbehaviour, prevent, hinder, or interrupt the free passage of any other carriage, or of H. M.'s subjects on the said highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse or neglect to turn aside and make way for any coach, chariot, chaise, loaded waggon, cart, or other loaded carriage; or if any person shall drive, or act as the driver of any such coach, post-chaise, or other carriage, let for hire, or waggon, wain, or cart, not having the owner's name (as before, § 59. *infra*, required) painted thereon, or shall refuse to discover the true christian and surname of the owner of such respective carriages; every such driver so offending in any of the cases aforesaid, and being convicted of any such offence, either by his own confession, the view of a justice of peace, or by the oath of one or more credible witness or witnesses before any justice of the peace of the limit where such offence shall be committed, shall, for every such offence, forfeit (No. LV.) any sum not exceeding 10*s*., in case such driver shall not be the owner of such carriage; and in case the offender be owner of such carriage, then any sum not exceeding 20*s*.; and in either of the said cases, shall, in default of payment, be committed to the house of correction for any time not exceeding one month, unless the same shall be sooner paid; and every such driver, offending in either of the said cases, shall and may, by authority of this act, (No. LIV.) with or without any warrant, be apprehended by any person or persons who shall see such offence committed, and shall be immediately conveyed or delivered to a constable or other peace officer, in order to be conveyed before some justice of the peace, to be dealt with according to law; and if any such driver, in any of the cases aforesaid, shall refuse to discover his name, it shall and may be lawful for the justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the house of correction for any time not exceeding three months, or to proceed against him for the penalty aforesaid, by a description of his person and the offence, and expressing in such proceedings that he refused to discover his name.

Empty cart, and not turning aside.

(No. LV.)

(No. LIV.)

Driver refusing to discover name.

Penalty.

The owner's name and place of abode to be put on carriages.

§ 59. And for the better discovery of offenders, the owner of every waggon, wain, or cart, and also of every coach, post-chaise, or other carriage let to hire, shall paint, or cause to be painted, upon some conspicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all such coaches, post-chaises, or other carriages, before the same shall be used upon any public highway, his christian and surname, and place of abode, in large legible letters; and continue the same thereupon so long as such waggon, cart, coach, post-chaise, or other carriage, shall be used upon any such highway; and the owner of every common stage-waggon or cart, employed in travelling stages from town to town, shall, over and above his christian and surname, paint or cause to be painted on the part, and in the manner aforesaid, the following words, "*Common stage-waggon*," or "*Cart*," as the case may be. And every person using any such carriage as aforesaid upon any highway, without the names and descriptions painted thereon respectively, as aforesaid, or who shall paint or cause to be painted any false or fictitious name or place of abode on such

waggon, wain, cart, coach, post-chaise, or other carriage, shall forfeit for every such offence not exceeding *5l.*, nor less than *20s.* 13 G. 3. c. 78.

[See Vol. V. tit. Stage Coaches, for enactments relative to the misconduct of drivers of public coaches, and stat. 1 *G.* 4. *c.* 4. for punishing persons occasioning accidents by furious driving.] Misconduct of coachmen.

§ 62. And for preventing obstructions near public bridges, if any person, collecting any tolls payable for passing over any public bridge with carriages or cattle of any kind, shall keep any victualling-house, alehouse, or other place of public entertainment, or shall sell or permit to be sold therein any wine, beer, ale, cider, spirituous liquors, or other strong liquors by retail, he shall, on conviction before any justice of the limit wherein such offence shall be committed, by confession or oath of one witness, forfeit for every such offence the sum of *5l.* Alehouses not to be near bridges.

§ IX. Direction Posts, Blocks, Milestones, Water Marks, and Battlements of Bridges.

[13 G. 3. c. 78. § 26. 52.]

By stat. 13 *G.* 3. *c.* 78. § 26. And, for the better convenience of travellers, where several highways meet, it is enacted, that the said justices, at some special sessions to be held for the purposes of this act, shall issue their precept (No. XXX.) to the surveyor of the highways for any parish, township, or place, where several highways meet, and there is no proper or sufficient direction post, or stone, already fixed or erected, requiring him forthwith to cause to be erected or fixed, in the most convenient place where such ways meet, a stone or post, with inscriptions thereon, in large legible letters, painted on each side thereof, containing the name or names of the next market town or towns, or other considerable place or places, to which the said highways respectively lead; and also at the several approaches or entrances to such parts of any highways as are subject to deep or dangerous floods, graduated stones or posts, denoting the depth of water in the deepest part of the same, and likewise such direction posts or stones as the said justices shall judge to be necessary, for the guiding of travellers in the best and safest tract through the said floods or waters; and the said surveyor shall be reimbursed the expences of providing and erecting the same respectively out of the monies which shall be received by him or them, pursuant to the directions of this act; and in case any surveyor shall, by the space of three months after such precept to him directed and delivered, neglect or refuse to cause such stones or posts to be fixed, as aforesaid, every such offender shall forfeit the sum of *20s.* 13 G. 3. c. 78. Direction posts where and how to be erected. (No. XXX.)

§ 52. And whereas in some places it hath been and may be found necessary, and the surveyors are hereby authorized and required, to secure horse causeways and foot causeways, by posts, blocks, or great stones, fixed in the ground, or by banks of earth cast up, or otherwise, from being broken up and spoiled with waggons, wains, carts, or carriages; and forasmuch as several evil disposed persons do or may wilfully or wantonly pull up, cut down, and remove or damage the said posts, blocks, and great stones, so fixed, or to be fixed as aforesaid, and drive carriages upon such banks and causeways, or against the sides thereof, and Penalty on persons damaging banks, causeways, direction posts, mile stones, battlements of bridges, &c.

13 G. 3, c. 78. also dig or cast down the said banks, which are the securities and defence of the said causeways, whereby the causeways or banks are often ruined and destroyed; and such evil-disposed persons do or may break, damage, or throw down the stones, bricks, or wood, fixed upon the parapets or battlements of bridges, and do or may pull down, destroy, obliterate, or deface, any milestone or post, graduated or direction post or stone, erected or to be erected upon any highway: for prevention thereof, it is enacted, that every person who shall be guilty of any such offence shall, upon complaint thereof made to any justice of the peace of the limit where the same shall be proved to be done, by the oath of any one credible witness, or upon view of the justice himself, forfeit for every of the said offences any sum not exceeding *5l.*, nor less than 10*s.*; and in default of payment thereof, shall be committed to the house of correction of such limit, there to be whipped, and kept to hard labour for any time not exceeding one calendar month, nor less than seven days, at the discretion of such justice.

[It were much to be wished, that every town or village should be compellable to notify, either on the market place, church, or other obvious place, in addition to the name of such town or village, its relative distance from the adjacent market towns, as well as from the metropolis. It were also to be wished that the penalty in the above clause extended to persons *riding* on horseback over foot causeways. *See stat.* 3 *G.* 4. *c.* 126. § 119. *Post, tit.* Highways, (*Turnpike.*)]

§ X. Breadth of Wheels, and Number of Horses.

[6 G. 1. c. 6.—18 G. 2. c. 33.—13 G. 3. c. 78. § 55, 56, 57, 58.]

Breadth of wheels and number of horses.

By stat. 13 *G.* 3. *c.* 78. § 55. After reciting that whereas the highways, not being turnpike roads, are much prejudiced by the narrowness of the wheels of the several carriages travelling thereon, and by the excessive burdens loaded in such carriages, it is enacted that no waggon, having the sole or bottom of the fellies of the wheels of the breadth of nine inches shall go or be drawn with more than eight horses; and no cart having the sole or bottom of the fellies of the wheels of the breadth of nine inches shall go or be drawn with more than five horses.

And no waggon, having the sole or bottom of the fellies of the wheels of the breadth of six inches, and rolling on each side a surface of nine inches, shall go or be drawn with more than seven horses.

And no waggon, rolling a surface of six inches only, shall go or be drawn with more than six horses; and no cart, having the sole or bottom of the fellies of the wheels of the breadth of six inches, shall go or be drawn with more than four horses.

And no waggon, having the sole or bottom of the fellies of the wheels of less breadth than six inches shall go or be drawn with more than five horses; and no cart having the sole or bottom of the fellies of less breadth than six inches shall go or be drawn with more than three horses.

On pain that the owner shall forfeit *5l.* and the driver (not being the owner) 10*s.*, for every horse or beast which shall be so drawing above the number so respectively limited, to the sole use of the informer.

But carriages moving upon wheels or rollers of the breadth of 16 inches on each side thereof, with flat surfaces, shall be allowed to be drawn with any number of horses or other cattle. 13 G. 3. c. 78.

§ 56. Provided, that no prosecution shall be commenced before a justice of peace, by way of information, for any forfeiture incurred by the owner or driver of any carriage, having a greater number of horses therein than are allowed by this act, unless such information be laid within three days after the offence committed; and that no action shall be commenced for any such offence, unless the same be commenced within one calendar month after the offence committed; and that neither such information or action shall be laid or commenced, unless notice shall be given by the informer to the driver of every such carriage, on the day upon which the offence shall be committed, of an intention to complain of such offence; and if it shall appear to the justice before whom such complaint shall be made, that the offender lives so remote as to make it inconvenient to summon him to appear before such justice, the justice may dismiss the complaint, and leave the informer to his remedy by action at law.

Prosecutions for such additional number of horses, how and in what manner to be carried on.

§ 57. Provided always, that it shall and may be lawful for the justices of the peace, at their respective general quarter sessions of the peace, to be held in the week after *Michaelmas*, to license, in such manner, and for such time, as they shall think fit, an increase of the number of horses to be drawn in carriages up any steep hill, or on any road not turnpike, within their respective jurisdictions, over and above the number hereinbefore limited, if, upon inquiry into the state and condition of such roads, they shall find any additional number of horses necessary; and, from time to time, at any *Michaelmas* quarter sessions, to revoke, alter, or vary the same, as they shall think fit.

Justices of peace, at their Michaelmas quarter sessions, may licence an increase of the number of horses.

§ 58. And provided that if it shall appear upon the oaths of credible witnesses to the satisfaction of any justice of the peace, or of any court of justice authorized to enforce the execution of this act, that any waggon, cart, or carriage could not by reason of deep snow or ice be drawn by the number of horses or beasts of draught hereby allowed, they may and are hereby required to stop the proceedings before them for recovery of the forfeiture.

Exception as to snow and ice;

Provided also, that nothing herein, concerning the number of horses and wheels of carriages, shall extend to carts, waggons, or other carriages employed only in carrying any one stone, block of marble, cable, rope, or piece of metal, or piece of timber, or to such ammunition or artillery as shall be for H. M.'s service.

and large stones, &c.

And for all the purposes of this act, two oxen or horned cattle shall be considered as one horse.

With respect particularly to the cities of *London* and *Westminster*, and parts adjacent, it is enacted by stat. 6 *G*. 1. *c*. 6., that no person in *London* and *Westminster*, or within 10 miles thereof, shall carry at any one load, in waggons or carts having their wheels shod with tire of, or streaks of iron, more than 12 sacks of meal (*a*), of five bushels each, nor more than 12 quarters of malt (*a*), nor more than 700½ of bricks, nor more than one chaldron of coals (*a*), on pain of of forfeiting any one of the horses,

6 G. 1. c. 6. Regulations in London and Westminster.

(*a*) Repealed as to Meal, Malt, and Coals, by stat. 11 *G*. 3. *c*. 51.

with the geers, bridles, and halters therewith used, in such manner and to such uses as the penalties directed to be levied and applied by stat. 5 *G*.1. *c*.12. (now repealed by stat.7 *G*.3. *c*.42. § 57.)

18 G.2. c.33.

And by stat. 18 *G*. 2. *c*. 33. the wheels of every cart, car, or dray, within the bills of mortality, shall be six inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horses, after they are up the hills from the water-side; on pain of 40*s*. by warrant of one justice, by distress; and for want of distress, on non-payment, in six days after demand, to be committed till paid: but this not to extend to any country cart or waggon that shall bring any goods, or shall carry any goods half a mile beyond the paved streets of the said cities and places.

Also any person within the said limits, using any cart, car, or dray, having the wheels full six inches broad, when worn, may have the same bound round with tire of iron, provided it be six inches broad, and made flat, and not set on with rose-headed nails.

§ XI. Breadth, widening, changing, and diverting Highways.

[8 & 9 W. 3. c. 16.—13 G. 3. c. 78. § 15, 16, 17, 18, 19, 20, 21, 22.—55 G. 3. c. 68. § 1, 2, 3, 4, 5.]

Highways may be changed by a writ of *ad quod damnum*.

By the common law an ancient highway cannot be changed, without the king's licence first obtained upon a writ of *ad quod damnum*, and an inquisition thereon found, that such a change will not be prejudicial to the public: and it is said, that if one change a highway without such authority, he may stop the new way whenever he pleases; and it seemeth that the king's subjects have not such an interest in such new way, as will make good a general justification of their going in it as a common highway, but that in an action of trespass brought by the owner of the land against those who shall go over it, they ought to shew specially, by way of excuse, how the old way was obstructed, and the new one set out; also it is said that the inhabitants are not bound to keep watch in such a new way, or to make amends for a robbery therein committed, or to repair it. 1 *Haw*. *c*. 76. § 3.

[*Note*.—The writ of *ad quod damnum* is an original writ, issuing out of and returnable into chancery, directed to the sheriff to enquire by a jury whether such change will be detrimental to the public; which inquisition, being a proceeding only *ex parte*, is in its own nature traversable, and heretofore the party grieved might be heard against it before the chancellor; but now, by stat. 55 *G*. 3. *c*. 68. § 3. *post*., jurisdiction is given to the justices in sessions to hear and determine appeals concerning the same.]

Repair of a road made in pursuance of a writ of *ad quod damnum*.

Where a new road is made in pursuance of such writ and inquisition thereupon found, after the person who sued out the writ hath once made the said road, the parishioners ought to keep it in repair for the future; because, being discharged from the repairing of the old road, no new burden is laid upon them, but their labour is only transferred from one place to another. 3 *Atk*. 771.

But if the new road lie in another parish, then the person who sued out the writ and his heirs ought not only to make it, but to keep it in repair; otherwise the parishioners of such other parish

would have a new charge upon them, and no recompence by the former road being taken away. *Ex parte Vennor*, 3 *Atk.* 772.

Also, it is certain that a highway may be changed by the act of God; and therefore it hath been holden that if a water which has been an ancient highway by degrees changes its course, and goes over different ground from that whereon it used to run, yet the highway continues in the new channel, in the same manner as in the old. 1 *Haw. c.* 76. § 4. **or by the act of God;**

An highway inclosed by virtue of a special act of parliament (for dividing and inclosing open common fields) shall continue to be repaired by the parish or township as it was before, unless otherwise directed by the act: for if he who inclosed the ground adjoining to the highway were in such case obliged to repair, it might happen that his allotment of the common would not be worth the expence of repairing the way. *R.* v. *the Inhab. of Flecknow*, 1 *Burr.* 465. *See ante, Sect.* IV. (1). **or by act of parliament;**

In aid of the common law, and to render the changing of highways less troublesome and expensive, power is given by stat. 13 *G.* 3. *c.* 78. to the justices of the peace to widen, divert, and change highways, as they shall judge most convenient. **or by two justices.**

In order to which, it is enacted by stat. 13 *G.* 3. *c.* 78. § 15. That the surveyors of the highways shall, and they are hereby required to make, support, and maintain, or cause to be made, supported, and maintained, every public cartway leading to any market-town, 20 feet wide at the least; and every public horseway or driftway, eight feet wide at the least, if the ground between the fences inclosing the same will admit thereof. **13 G. 3. c. 78. Cartways to market towns are to be made 20 feet wide, and horseways and driftways 8 feet wide.**

§ 16. Provided always, that where it shall appear, upon the view of any two or more of the said justices of the peace, that the ground or soil of any highway between the fences thereof is not of sufficient breadth, and may be conveniently widened and enlarged, or that the same cannot be conveniently enlarged, and made commodious for travellers, without diverting and turning the same; such justices shall, and they are hereby impowered, within their respective jurisdictions, to order (No. XVI.) such highways respectively to be widened and enlarged, or diverted and turned, in such manner as they shall think fit, so that the said highways, when enlarged and diverted, shall not exceed 30 feet in breadth; and that neither of the said powers do extend to pull down any house or building, or to take away the ground of any garden, park, paddock, court, or yard; and, for the satisfaction of the person or persons, bodies politic or corporate, who are seised or possessed of, or interested in their own right, or in trust for any other person or persons, in the said ground that shall be laid into the said highways respectively, so to be enlarged, or through which such highway, so to be diverted and turned, shall go, the said surveyor, under the direction and with the approbation of the said justices, shall and is hereby impowered to make an agreement with him, her, or them, for the recompence to be made for such ground, and for the making such new ditches and fences as shall be necessary, according and in proportion to their several and respective interests therein, and also with any other person or persons, bodies politic or corporate, that may be injured by the enlarging, altering, or diverting such highways respectively, for the satisfaction to be made to him, her, or them respectively, as **Justices may order narrow roads to be widened, (No. XVI.) or diverted and turned. Surveyors to agree with owners of lands for recompence;**

13 G.3. c.78.

and if they cannot agree,

aforesaid; and if the said surveyor, under the direction, and with the approbation of the said justices, cannot agree with the said person or persons, bodies politic or corporate, or if he, she, or they cannot be found, or shall refuse to treat, or take such recompence or satisfaction as shall be offered to them respectively by such surveyor; then the justices of the peace, at any general quarter sessions to be holden for the limit wherein such ground shall lie, upon certificate in writing, (No. XVII.) signed by the justices making such view as aforesaid, of their proceedings in the premises, and upon proof of 14 days' notice in writing having been given by the surveyor of such parish, township, or place, to the owner, occupier, or other person or persons, bodies politic or corporate, interested in such ground, or to his, her, or their guardian, trustee, clerk, or agent, signifying an intention to apply to such quarter sessions for the purpose of taking such ground, shall impanel a jury of 12 disinterested men, out of the persons returned to serve as jurymen at such quarter sessions; and the said jury shall, upon their oaths, to the best of their judgment, assess the damages to be given, and recompence to be made, to the owners and others interested as aforesaid in the said ground, for their respective interests, as they shall think reasonable, not exceeding 40 years' purchase for the clear yearly value of the ground so laid out, and likewise such recompence as they shall think reasonable, for the making of new ditches and fences on the side or sides of the said highways that shall be so enlarged or diverted, and also satisfaction to any person or persons, bodies politic or corporate, that may be otherwise injured by the enlarging or diverting the said highways respectively.

(No. XVII.)

to be assessed by jury at the quarter sessions.

Costs of proceedings.

§ 18. If the jury shall give a verdict for more money than was offered by the surveyor before the application to the sessions, the costs attending the several proceedings shall be paid by the surveyor out of the money in his hands, or to be levied under this act: but if the jury shall give a verdict for no more, or for less than was offered by the surveyor, then the costs shall be paid by the person or body who refused to accept the satisfaction so offered to him as aforesaid.

On payment of money assessed, ground to be deemed a public highway.

§ 16. And upon payment or tender of the money so to be awarded and assessed to the person or persons, bodies politic or corporate, intitled to receive the same, or leaving it in the hands of the clerk of the peace of such limit, in case such person or persons, bodies politic or corporate, cannot be found, or shall refuse to accept the same, for the use of the owner of, or others interested in, the said ground, the interest of the said person or persons, bodies politic or corporate, in the said ground, shall be for ever divested out of them, and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public highway, to all intents and purposes whatsoever; saving nevertheless to the owner or owners of such ground all mines, minerals, and fossils, lying under the same, which can or may be got without breaking the surface of the said highway; and also all timber and wood growing upon such ground, to be fallen and taken by such owner or owners within one month after such order shall have been made, or in default thereof, to be fallen by the said surveyor or surveyors, within the respective months aforesaid, and laid upon the land adjoining, for the benefit of the said owner or owners; and where

there shall not appear sufficient money in the hands of the surveyor or surveyors, for the purposes aforesaid, then the said two justices, in case of agreement, or the said court of quarter sessions, after such verdict as aforesaid, shall order an equal assessment to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, in the respective parishes, townships, or places, where such highways shall lie, and direct the money to be paid to the person or persons, bodies politic or corporate, so interested, in such manner as the said justices, or court of quarter sessions respectively, shall direct and appoint; and the money thereby raised shall be employed and accounted for, according to the order and direction of the said justices, or court of quarter sessions respectively, for and towards the purchasing the land to enlarge or divert the said highways, and for the making the said ditches and fences, and also satisfaction for the damages sustained thereby; and the said assessment, if not paid within ten days after demand, shall, by order of the said justices, or court of quarter sessions respectively, be levied by the said surveyor, in the manner hereinafter mentioned: provided, that no such assessment to be made in any one year shall exceed the rate of sixpence in the pound of the yearly value of the lands, tenements, woods, tithes, and hereditaments so assessed. *Vide* stat. 54 *G.* 3. *c.* 109. *post.*

13 G.3. c.78. Where there is not money sufficient, assessments may be raised by order of the justices at their quarter sessions

not exceeding 6*d*. in the pound.

§ 17. When any such new highways shall be made as aforesaid, the old highway shall be stopped up, and the land and soil thereof shall be sold by the surveyor, with the approbation of the said justices, (No. XVIII.) to some person whose lands adjoin thereto, if he shall be willing to purchase the same; if not, to some other person, for the full value thereof. But if such old road shall lead to any lands, house, or place, which cannot, in the opinion of such justices respectively, be accommodated with a convenient way and passage from such new highway, in such case, the old highway shall only be sold, subject to the right of way and passage to such lands, house, or place respectively; and the money arising by the sale shall be applied towards the purchase of the land where such new highway shall be made; and on payment or tender of the money, and on a certificate (No. XIX.) signed by the said two justices, or by the chairman of the said court of quarter sessions respectively, describing the lands so sold, and expressing the sum so agreed for, and directing to whom the same shall be paid, and on the purchaser's taking a receipt (No. XX.) for such purchase-money from the person entitled to receive the same by an indorsement on the back of such certificate, the soil of such old highway shall become vested in such purchaser and his heirs. But all mines, minerals, and fossils, lying under the same, shall continue to be the property of the person who would have been entitled to the same, if such old highway had continued there.

Old way may be stopped up and the land sold, where a new way is made.

(No. XVIII.)

(No. XIX.)

(No. XX.)

It has been decided, that the power thus given to two justices to order any highway to be widened extends to roads repairable *ratione tenuræ;* and that upon disobedience to such order the party may either be proceeded against summarily under the statute, or by an indictment for an offence at common law. *R.* v. *Balme*, 2 *Cowp.* 648. 1 *Haw. c.*76. §57. 1 *Russ.* 454.

Power of justices to order highways to be widened, extends to roads repairable *ratione tenuræ.*

The 19th sect. of 13 *G.*3. *c.* 78. enacted, That highways, bridleways, and footways might be diverted by the justices at their special sessions, with the consent of the owner of the lands, so as to

13 G.3. *c.*78. § 19. repealed in part by 55 G.3. c.68.

make them nearer and more commodious to the public; and provided for an appeal to the quarter sessions by the persons injured by any such proceedings, or by the inclosure of any road by an inquisition upon a writ of *ad quod damnum:* but this part of the section is repealed by stat. 55 G. 3. c. 68. § 1., which recites that it is expedient that more public notice should be given of any order made, or proceeding had, for diverting, turning, stopping, and inclosing any highway, bridleway, or footway; and also that a greater facility of appeal to the quarter sessions against such order or proceeding should be given to any person or persons who may think themselves aggrieved thereby; and also that the justices of peace should have power, under certain regulations, to stop up unnecessary highways, bridleways, and footways.

55 G. 3. c. 68.

Justices in certain cases, by order of a special sessions, may divert and turn certain highways, bridleways, and footways.

(Nos. XXI, XXII.)

By § 2. It is enacted, that when it shall appear, upon the view of any two or more of the said justices (No. XXI.) of the peace, that any public highway, or public bridleway or footway, may be diverted, so as to make the same nearer or more commodious to the public, and the owner or owners of the lands and grounds through which such new highway, bridleway, or footway, so proposed to be made, shall consent thereto, by writing (No. XXII.) under his or their hand and seal, or hands and seals, it shall and may be lawful, by order of such justices, at some special sessions, to divert, and turn, and to stop up such footway, and to divert, turn, stop up, and inclose, sell, and dispose of, such old highway or bridleway, and to purchase the ground and soil for such new highway, bridleway, or footway, by such ways and means, and subject to such exceptions and conditions, in all respects, as in the said recited act mentioned with regard to highways to be widened or diverted; and also when it shall appear, upon the view of any two or more of the said justices of the peace, that any public highway, bridleway, or footway is unnecessary, it shall and may be lawful, by order of such justices, or any two of them, to stop up, and to sell and dispose of such unnecessary highway, bridleway, or footway, by such ways and means, and subject to such exceptions and conditions in all respects, as in the said recited act is mentioned, in regard to highways to be widened and diverted; except that the money to arise from such sale, where, by the said act, it would be applicable to the purchase of the ground and soil of the new highways or bridleways therein mentioned, shall be paid to the surveyor or surveyors, and be applied towards the general repairs of the highways and bridleways of the parish, township, or place, within which the said highway, bridleway, or footway, so stopped up, shall be situate: provided, that in the several cases before mentioned, a notice, in the form or to the effect of schedule (A.) (a) to

Justices may order the stopping up of unnecessary highways, &c.

Notice must be affixed at the

(a) Schedule referred to.

SCHEDULE (A.)

Form of Notice.

Notice is hereby given, that on the ——— *day of* ——— *last, an order was signed by* J. W. *and* T. H., *two of his majesty's justices of the peace in and for the county of* ——— , *for* [if the order be for *turning, diverting, and stopping up, &c.* here so state it, and describe the road ordered to be *turned, diverted, and stopped up;* —if the order be for *stopping up a useless road,* here so state it, and describe the road ordered to be stopped up;] *and that the said order will be lodged with the*

this act annexed, shall be affixed in legible characters at the place and by the side of the said highway, bridleway, or footway from whence the same is directed to be turned, diverted, or stopped up, and also inserted in one or more newspaper or newspapers published or generally circulated in the county where the parish, township, or place in which the highway, bridleway, or footway, so ordered to be diverted and turned, or stopped up, (as the case may be,) shall lie, (or, in case no such newspaper shall be so published or circulated in such county, then in any newspaper or newspapers published or circulated in the nearest adjoining county,) for three successive weeks after the making of such order; and a like notice shall be affixed to the door of the church or chapel of every parish or township in which such highway, bridleway, or footway so ordered to be diverted, turned, or stopped up, or any part thereof, shall lie, on three successive *Sundays* subsequent to the making of such order; and the said several notices (*a*) having been so published, the said order shall at the quarter sessions which shall be holden within the limit where the highway, bridleway, or footway, so diverted and turned, or stopped up, shall lie, next after the expiration of four weeks from the first day on which such notices shall have been published as aforesaid, be returned to the clerk of the peace in open court, and lodged with him; and the said order shall at such quarter sessions be confirmed, and by the clerk of the peace inrolled amongst the records of the said court of quarter sessions. (See *Harber* v. *Rand*, 9 *Price*, 58. Vol. III. p. 7.)

55 G. 3. c. 68.

place, &c. and inserted in the newspapers of the county in which such highways, &c. shall lie;

and the order returned to the clerk of the peace, and confirmed and inrolled at quarter sessions.

§ 3. Provides, that where any such highway, bridleway, or footway, shall be so ordered to be stopped up or inclosed, and such new highway, bridleway, or footway, set out and appropriated in lieu thereof as aforesaid, or where any unnecessary highway, bridleway, or footway, shall be so ordered to be stopped up as aforesaid, it shall and may be lawful for any person or persons injured or aggrieved by any such order or proceeding, or by the inclosure of any road or highway, by virtue of any inquisition taken upon any writ of *ad quod damnum*, to make his or their complaint thereof, by appeal to the justices of the peace at the said quarter sessions, upon giving ten days' notice in writing of such appeal to the surveyor of the highways of the parish, township, or place wherein such highway, bridleway, or footway shall be situated; and also affixing such notice to the door of the church or chapel of such parish, township, or place; and the said court of quarter sessions is hereby authorized and empowered to hear and finally determine such appeal.

Persons injured by any such order or proceedings, may appeal to justices at quarter sessions, upon giving 10 days' notice.

§ 4. Enacts, that if no such appeal be made, or being made, such order and proceedings shall be confirmed by the said court, the

If no appeal be made, or if such

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clerk of the peace for the said county, at the general quarter sessions of the peace, to be holden at ———, in and for the said county, on the ——— day of ——— next, and also that the said order will at the said quarter sessions be confirmed and inrolled, unless upon an appeal against the same to be then made, it be otherwise determined.

(*a*) These notices must be given in case of an appeal against an inclosure of a highway, by virtue of a writ of *ad quod damnum*; and a notice to the party interested is not alone sufficient: indeed the act is express upon this point. *R.* v. *the Just. of Essex*, 1 *B.* & *A.* 373.

55 G. 3. c. 68.

order be confirmed, the old ways may be stopped, and proceedings shall be conclusive; and new highways shall afterwards continue public highways, &c.

said inclosures may be made, and the said ways stopped; and the proceedings thereupon shall be binding and conclusive to all persons whomsoever; and the new highways, bridleways, and footways, so to be appropriated and set out, shall be and for ever after continue a public highway, bridleway, or footway, to all intents and purposes whatsoever; but no inclosures of such old highways, bridleways, or footways (except in the case of stopping up of such useless highways, bridleways, or footways, as hereinbefore is mentioned,) shall be made, until such new highway, bridleway, or footway, shall be completed and put into good condition and repair, and so certified by two justices of the peace upon view thereof; which certificate shall be returned to the clerk of the peace, and by him inrolled amongst the records of the court of quarter sessions, next after such order as aforesaid shall have been confirmed or inrolled pursuant to the directions hereinbefore contained; but from and after the inrolment (*a*) of such order and certificate, such old highway, bridleway, or footway, shall be stopped up, and the soil of such old highway, or bridleway sold, in the manner and subject to the reservations and restrictions in the said recited act mentioned, with respect to highways to be diverted by virtue of the said recited act.

§ 5. Provides that this act shall not annul or affect any order or proceeding made or had previous to the passing of the act.

An order of justices for diverting a highway stated that the new road was to pass through the lands of the late *T. J.*, and that the justices had received evidence of the consent of the said *T. J.* in his lifetime: Held, that this order was bad, because it did not thereby appear that *T. J.* was the owner of the estate at the time when the order was made.

Rex v. *Kirk*, *M.* 3 *G.* 4. 1 *B.* & *C.* 21. An order of two justices for the county of *Denbigh*, made at a special sessions held on the 7th of *June*, 1821, recited that they had found, upon view, that a certain part of a highway therein particularly described, by reference to a plan annexed to the order, might be diverted and turned, so as to make the same nearer and more commodious to the public; and that they had viewed a course in lieu thereof, therein also particularly described, by reference to the same plan, part of which new road was to pass through the lands and grounds of the late *Thomas Jones*, Esq. The order then stated that they had received evidence of the consent of the said *T. Jones*, Esq., in his lifetime, to the said part of the new road being made and continued through his lands, by writing under his hand and seal; and directed the road to be diverted and turned accordingly. The sessions, on appeal, having confirmed this order, it was removed into the court of K. B. by *certiorari*, and a R. N. having been obtained for quashing it, and the order of sessions confirming it; after cause shown, *Abbott* C. J. said, "I am of opinion that this order must be quashed. It seems to me that the proper construction of the statute will be to hold that there must be a consent of the person who is the owner of the estate at the time when the order is made. Now, here it does not appear, upon the face of the order, that the person whose consent was

(*a*) In the 19th sect. of stat. 13 *G.* 3. *c.* 78. the words were "*from and after such certificate;*" but in other respects the clauses are nearly similar. Upon the 19th sect. of 13 *G.* 3. *c.* 78. it was held by the court of C. P. that if the orders and certificates of magistrates were delivered to the clerk of the peace to be inrolled the statute was satisfied, although the clerk of the peace made no transcript thereof, the statute being only directory to the officer as to this inrolment; and it is doubted whether that statute intended that a transcript should be made. *De Ponthieu* v. *Pennyfeather*, 5 *Taunt.* 634.

obtained was alive, either at the time when the order was made, or at any time after the proceedings had commenced; for it is not stated whether the consent was given before or after the justices had made their view. Our present decision will not affect the question, whether the owner of an estate may revoke a consent given by a former owner who was alive, and consenting at the time the order was made; we only decide, that it must appear on the face of the order that the consent of the person who is the owner at the time when the order is made has been obtained.—Order of sessions quashed. Rex v. Kirk.

By stat. 55 G. c. 68. § 2., when a footway, &c. is diverted by an order of justices, three descriptions of notice are to be given, and the order is to be confirmed and enrolled at the quarter sessions held next after the expiration of four weeks from the first day of giving such notice: Held, that the computation must be made from the first day of giving that description of notice which is last published: Held also, that an assent to the turning of the road, given under the hand and seal of an agent of the party through whose ground the new road is to pass, is insufficient.

Rex v. *the Justices of Kent*, *E.* 4 *G.* 4. 1 *B.* & *C.* 622. By an order of two justices, bearing date the 20th of *December*, 1821, made under stat. 55 *G.* 3. *c.* 68., a public footway in the parish of *Eltham*, in the county of *Kent*, passing through the lands of *E. Wilgress* and *W. Stace*, was diverted, and as the new footpath also passed through their lands, the old one was given to them in exchange. The order also stated that the owners of the land, through which the new footway was to pass, were consenting thereto *in the manner required by law*. Notices were published, in pursuance of stat. 55 *G.* 3. *c.* 68. § 2. *ante*, p. 862. and, at the quarter sessions holden for the county, on the 17th of *January* following, the order was confirmed and enrolled. Upon the enrolment it appeared, that *E. Wilgress*, for herself, and *T. Bicknell*, solicitor for *W. Stace*, gave their assent, under hand and seal, to the making of the new footway. — A rule was obtained for quashing the original order, and also the order of confirmation, on the grounds, that the assent by *Bicknell* for *Stace* was insufficient, and that the confirmation and enrolment did not take place at the sessions, pointed out by stat. 55 *G.* 3. *c.* 68.—After cause shewn, *per Abbott* C. J. Upon looking at this act, I have no doubt but that this Court must quash the order of sessions. What effect that will have upon the original order is a different question. By the second section, notice is required to be given in three modes; by affixing it by the side of the road; by advertisement in a newspaper; and by affixing it to the church door. It then proceeds: "And the said several notices having been so published, the said order shall, at the quarter sessions which shall be holden within the limit where the highway, bridleway, or footway, so diverted and turned or stopped up, shall lie, next after the expiration of four weeks from the first day on which such notice shall have been published, be returned to the clerk of the peace, &c., and shall, at such quarter sessions, be confirmed, and, by the clerk of the peace, enrolled amongst the records of the court of quarter sessions." The notice cannot be considered as given until it has been published once in each of the modes required by the act. The computation must, therefore, be made from the first day on which that description of notice shall be given which is last published. Here, four weeks had not elapsed between the *Sunday* on which notice was first affixed to the church door, and the sessions where the confirmation and enrolment took place. It is of great importance that these notices should be correct; for, by the third section, an appeal is given to the same sessions at which the enrolment is to be made. In this instance, the confirmation and enrolment were made at a quarter sessions held before the

Rex v. The Justices of Kent.

requisite time had elapsed. Parties grieved were not bound to appeal then; and, if we were to hold the confirmation and enrolment good, they would be deprived of an opportunity of appealing at the subsequent sessions. That order must, therefore, be quashed. — *Bayley* J. I am of opinion that the order of sessions must be quashed, and the original order also. It should have appeared on the face of that order, that a sufficient assent was given under the hand and seal of *Stace*. The public have a right, if a path is diverted, to see the order, with all requisites, enrolled amongst the records of the sessions, as evidence of their right to the new path. — *Holroyd* J. I am of the same opinion upon both points; the consent upon which the original order was made was informal and insufficient. Notwithstanding any thing stated upon that, *Stace* might insist that he had not given a legal and valid assent. — *Abbott* C.J. As the rest of the Court think both orders bad, both must be quashed; and indeed I think that the original order would have fallen to the ground, even had the assent been properly given. R. A. See *R.* v. *Kirk, ante*, p. 864.

At some special sessions] This means a sitting convened by reasonable notice to the several justices acting and residing within the division; and unless such notice be given, the court of quarter sessions ought not to confirm and enrol the order, even though there be no appeal against it. *R.* v. *the Justices of Worcestershire*, 2 *B.* & *A.* 228. See Vol. V. *tit.* Sessions.

An order for stopping up an unnecessary highway, under 55 G. 3. c. 68. § 2. must be made at a special sessions, and that fact must be made appear on the face of the order.

Rex v. *Sheppard, H.* 60 *G.* 3. and 1 *G.* 4. 3 *B.* & *A.* 414. Two justices for the west riding of *Yorkshire* made the following order, dated 21st *September* 1818. "We whose names are hereunto subscribed, being two of H. M.'s justices of the peace acting in and for the said riding, having, upon view, this day found that two certain public footways, leading, &c. are unnecessary, do hereby order the same to be stopped up and discontinued from the public use." The sessions, on appeal, having confirmed the order, *Russell* in last *Trinity* term obtained a *certiorari* to remove both orders, for the purpose of quashing them, on the ground that the first order was insufficient, it not being therein stated that it was made at a special sessions, and he cited *Rex* v. *The Justices of Worcestershire*, 2 *B.* & *A.* 228. On shewing cause, it was said, that if the 13 *G.* 3. *c.* 78. is to be incorporated with the 55 *G.* 3. *c.* 68. the *certiorari* is taken away. — *Abbott* C. J. There is no clause in the 55 *G.* 3. *c.* 68. which takes it away, and, unless that be so, it lies by the common law. Then the only question remaining is, whether this order is, on the face of it, bad, it not being stated to have been made at a special sessions. I think that it is bad on that ground. It seems to me, that an order like this must, under the 55 *G.* 3. *c.* 68. § 2. be made at a special sessions. It is admitted, that an order for diverting a road must be so made, and no reason can be assigned for such a provision in that case, which will not apply, with equal or greater force, to the present. I think there are words in this clause sufficient to show this to be the intention of the legislature. After enacting, that the justices, at some special sessions, shall have power to divert highways, it proceeds to state, "And also, when it shall appear, upon the view of any two or more of the said justices, that a highway is unnecessary, it shall and may be lawful,

by order of such justices, or any two of them, to stop it up." Now the words "said justices" may, as it seems to me, refer to the previous words, "such justices at some special sessions:" if so, it will carry the plain intent of the legislature into effect, and avoid the incongruity which would otherwise arise. I am of opinion, therefore, that this order, and the order of sessions confirming it, must be quashed.—*Bayley* J. It was determined in *Rex* v. *The Justices of Worcestershire*, that, in order to constitute a special sessions properly, all the justices acting and residing within the limits must be convened; and this is a salutary regulation to prevent an improper exercise of such a power as the present. It seems to me that in the 55 *G.* 3. *c.* 68. § 2. the words "special sessions" have been by some accident omitted. But I think we may take the words "said justices" as referring to the justices immediately antecedent, who are justices at some special sessions. This will supply the accidental omission, and carry into effect the intention of the legislature. This order is therefore bad.—*Holroyd* J. I have had great doubts in the course of this argument, whether it was necessary, under the particular words of this clause, that such an order as the present should be made at a special sessions. But, considering the words altogether, and the intent of the legislature, and the incongruity which would arise if we were to hold different regulations applicable to the present case, and the case where a highway is diverted, I am now satisfied that it is requisite that the order should be made at a special sessions. My doubt arose from not being clearly of opinion that the words "said justices" referred to the words "said justices at some special sessions" used in the previous part of the clause. However, considering that the general intention of the act was manifestly to give the public the benefit of such a regulation, I think that in this case the order is bad.—*Best* J. The object of this act was plainly, as appears from the preamble, to protect the rights of the public. It ought, therefore, to receive a liberal construction. The object was to give every possible degree of publicity to orders like the present; and we should entirely defeat this if we were to give the construction to it which is contended for by those who argue in support of this order. For it would follow, that, even after a special sessions, consisting of many magistrates, had refused to make such an order, two justices might afterwards do so. That would be an absurd consequence, which the legislature never could have intended. The public inconvenience which would arise from permitting such an order as this to be made not at a special sessions, seems to me to be greater than that arising in the case where a way is diverted. I think, therefore, that this order must be made at a special sessions. It is argued, that the legislature have not said so. But the words "said justices" seem to me to refer to the justices at some special sessions; and, even without these words, I should be of opinion that the words "special sessions" must, from the manifest intent of the legislature, over-ride the whole clause. I therefore fully concur in the opinion that both these orders ought to be quashed.—Both orders quashed.

Rex v. Sheppard.

Where the court of quarter sessions confirmed an order of two justices, for stopping up a highway, without proof that the order

was previously made at a special sessions, and an application being made to the court of K. B. for a *mandamus* to enter continuances; the court would not interfere where the sessions had already decided upon a point peculiarly within their jurisdiction.

The King against the Justices of ———, 1 *Chit. Rep.* 164. *Campbell* moved for a *mandamus* commanding the defendants to enter continuances on an appeal against an order made by two justices for stopping up a highway. The appeal came on to be heard at the last quarter sessions, and the order was confirmed. It appeared, however, that there was some irregularity in this proceeding, inasmuch as the order could not be confirmed, unless upon proof that the order for stopping up the highway was made at a special sessions. This was necessary according to the authority of a case decided in last *Michaelmas* term, where there was no such evidence; but, on the contrary, it appeared that the order for shutting up the highway was not made at a special sessions. *Per Curiam.* The sessions appear to have decided that point, and we cannot interfere where the court of quarter sessions have decided a point peculiarly under their cognizance.—R. R.

Divert and turn] Under stat. 13 *G.* 3. *c.* 78. § 19. A new highway must have been set out before an old one could be stopped. The magistrates could only order the old highway to be stopped up, on the condition that a new highway had been made and put in a proper state. It was held not to be sufficient that another old highway was widened in different parts, so as to answer the purpose of a new road, the *termini a quo* and *ad quem* and the direction of it remaining the same as before. Increasing the width of one old highway, is neither *diverting* another old highway, nor making a *new* one. *Welsh* v. *Nash*, 8 *East*, 394.

If a new highway be not set out before the old one be stopped up, the legality of the order of the justices for diverting the old road and stopping it up, may be questioned in an action of trespass, notwithstanding such orders were confirmed by the sessions on appeal, stating the fact of a new road being set out in lieu of the old one. *S. C.*

Appeal to the next sessions, on giving ten days' notice] On this part of the statute a question has arisen, whether the appeal must be made to the sessions next after the order for stopping up the old way, or after the party has notice of such order. But it is now decided, that by the necessary construction of the statute, the appeal must be made to the quarter sessions *next after the order made*, without reference to any *notice* received by the appellant of such order. *R.* v. *the Justices of Staffordshire*, 3 *East*, 151.—*See* 7 *T. R.* 81. and *R.* v. *the Justices of Pembrokeshire*, 2 *East*, 213.

Rex v. Justices of Staffordshire.

If two justices make an order for diverting and turning a public footway, and afterwards an order for stopping up the old footway, the party grieved

R. v. *the Justices of Herefordshire*, *H.* 55 *G.* 3. 3 *M.* & *S.* 459. Two justices, at a special sessions *on the 20th of June*, made an order, by which they ordered a public footway to be diverted and turned; and upon the 4*th of July* following made another order, by which they ordered the old footway to be stopped up. Appeal against these orders was made at the next *Michaelmas* quarter sessions and not at the *Midsummer* quarter sessions, which were holden on the 11*th of July*, on which account the justices dismissed the appeal. A *mandamus* was moved for to enter continuances to the *next*

quarter sessions, &c. The question was, whether the time for appealing was to be reckoned from the date of the first or second order.—In support of the rule for a *mandamus* it was contended that the order for diverting and turning does not of necessity comprehend a shutting out of the public from the old way; but they had still a right to go along till the second order was made for shutting it up; and § 19. of 13 *G.* 3. *c.* 78. gives the appeal *expressly* where any footway shall be *ordered to be stopped up*, so that the appeal against the second order was at all events in good time. And of this opinion was the Court: for Lord *Ellenborough* C. J. said, "the *gravamen* as to the public is the *stopping up*; but the appeal must be confined to the latter order." Rex. v. Justices of Herefordshire. — may appeal to the quarter sessions against the last order, though he be too late to appeal against the first.

By stat. 13 *G.* 3. *c.* 78. § 19. (which is unrepealed by stat. 55 *G.* 3. *c.* 68.) where any highway, bridleway, or footway, *hath been* diverted and turned above twelve months, either from necessity, where the same hath been destroyed by floods, or slips of the ground, or from other causes and motives, if a new way hath been made in lieu thereof nearer or more commodious to the public, and the same hath been acquiesced in, and no suit or prosecution hath been commenced for the diverting or turning the same, such new way shall from henceforth be the public way to all intents and purposes whatsoever: and all persons liable to the repair of any such old highways, bridleway, or footway, shall continue liable to the repair of such new way, except where any agreement shall have been made relative to such repair between the parties interested, which hath laid the burthen thereof, or of any part thereof, upon any other person, in which case the same shall be observed. 13 G. 3. *c.* 78. Highways having been turned above 12 months from necessity without an order.

Hath been diverted and turned above twelve months] It has been decided that this clause is only retrospective in its operation. *Waite* v. *Smith*, 8 *T. R.* 133. Lord *Kenyon* C. J. in giving his judgment said, "if any jobs had been done before the act passed, that act has certainly cured them: but the legislature did not mean to give a sanction to any jobs in future."

And by stat. 13 *G.* 3. *c.* 78. § 22. If in any parish or place where a highway shall be diverted and turned by virtue of this act, it shall appear to the justices that there are *other* highways within such parish or place, besides that so to be diverted and turned, which may without inconvenience to the public be diverted into such new highway, or into any other within the same parish or place, and the charge of repairing the same may be thereby saved, the said justices may order such highway, which shall appear to them unnecessary, to be stopped up, and the soil thereof sold, in such manner, and subject to such restrictions, and such right of appeal, as hereinbefore directed concerning highways to be stopped up or inclosed. Unnecessary roads may be stopped up;

The power to shut up roads is given only where there is a new road to be set out. It must be one entire act; the clauses 19 and 22 make one provision, and the powers under them are to make but one transaction. *Page* v. *Howard*, *Cald.* 228. *Vide* stat. 55 *G.* 3. *c.* 68. § 2. *ante*, p. 862. but in cases only where a new road is set out.

Stat. 13 *G.* 3. *c.* 78. § 20. provides that no common land, lying between the fences of any old highway to be stopped up or inclosed by virtue of this act, shall be inclosed; and where the land lying between the fences of such highway, not being common land, shall, upon a medium, exceed 30 feet in breadth, and not In what cases, and in what manner, and upon what

13 G. 3. c. 78.

terms, the old highways, or the lands lying between the fences inclosing the same, shall be disposed of.

extend to 50 feet in breadth, the same shall not be stopped up or inclosed, until satisfaction shall be made to the owner of such land, for so much thereof as shall exceed the said breadth of 30 feet; and if the parties cannot agree in the satisfaction so to be made, the same shall be adjusted by the said justices, or the jury, if a jury shall be impanelled; and if the land between the fences inclosing such highways, not being common land, shall exceed 50 feet in breadth upon a medium, or if the said old road, so to be diverted or turned, shall lie through the open field or ground belonging to any particular person or persons, such person or persons, and also the person or persons intitled to the land between the fences on the side of such highway, shall respectively hold and enjoy the land and soil of such old highway, and pay to the surveyor, for the use of the highways, so much money as shall be agreed upon between the parties; or if they cannot agree, so much as shall be deemed and adjudged by the said justices, or jury, if such jury shall be impanelled as aforesaid, to be adequate to the purchase of it, estimating such highway at 30 feet in breadth, upon an average.

When old footways are stopped up, and new ones laid out, in what manner the owners of the lands shall make and receive satisfaction.

§ 21. Where any footway shall be diverted by virtue of this act through the land belonging to the same person who owned the land through which such old footway lay, the same shall be adjudged and deemed an exchange only, and no satisfaction or compensation shall be made, unless the land to be used for such new footway shall be of greater length, and of greater value, than the land used for such old footway; and where the said footway shall not be turned through the lands belonging to the same person, the damage occasioned by such old footway to the lands through which it lay, if the parties interested shall not agree in adjusting the same, shall be adjudged by two indifferent persons, the one to be named by the owner of the land, and the other by the said two justices; and if the persons so to be nominated cannot agree therein, they shall chuse some third person to adjudge the same, whose determination shall be final; and the money at which such damages shall be assessed shall be applied in making satisfaction to the owner or owners of the land through which such new footway shall be made.

[For the repairs of a way turned or diverted, see Highways, Turnpike, § VIII.]

§ XII. Assessments how to be made.

[13 G. 3. c. 78. § 30. 45, 46. — 54 G. 3. c. 109. § 1, 2, 3.]

Expences incurred for buying materials, making satisfaction for damages, &c.

By stat. 13 *G. 3. c.* 78. § 30. after reciting that whereas in some parishes, townships, or places, there may not be sufficient materials for the repair of the highways within the same, nor within the waste lands, common grounds, rivers, or brooks, of any other parish, township, or place, lying within a convenient distance from such highway, by reason whereof the surveyor of such highway may be forced to buy such materials, and to make recompence and satisfaction to the owner or occupier of inclosed lands, for damage which may be done by getting and carrying thereof: and whereas no provision is made for raising a fund to reimburse

the expences thereof, and also such expences as the said surveyors may incur, by erecting guide-posts, or other posts or stones, and by making or repairing such trunks, tunnels, plats, bridges, or arches, as aforesaid, and by rendering satisfaction for damages done to lands by the making of new ditches or drains, nor for the salary to be paid by such parish, township, or place, to such surveyor, as aforesaid; it is enacted, that upon application by such surveyor to the justices of the peace, at their special sessions, and oath made of the sum or sums of money which he hath *bona fide* laid out and expended, or which will be required for the purposes aforesaid, the said justices, or any two or more of them, shall, and they are hereby empowered, by warrant (No. XV.) under their hands and seals, to cause an equal assessment to be made, for the purposes aforesaid, upon all occupiers of lands, tenements, woods, tithes, and hereditaments, within such parish, township, or place, where such money shall be so expended or laid out; and the same shall be made and collected by such person or persons, and allowed in such manner, as the said justices, by their order at such sessions, shall direct and appoint in that behalf; and the money thereby raised shall be employed and accounted for, according to the direction of the said justices, for the purposes aforesaid; and the said assessment shall be levied in such manner as herein-after mentioned: provided nevertheless, that no such assessment to be made for those or any of those purposes, in any one year, shall exceed the rate of sixpence in the pound, of the yearly value of the lands, tenements, woods, tithes, and hereditaments, so to be assessed.

13 G.3. c.78.

on application to justices, at a special sessions, may be raised by an assessment,

(No. XV.)

not exceeding *6d.* in the pound.

§ 45. If upon application of the surveyor of the highways for any parish, township, or place, to the justices of the peace for the limit wherein such parish, township, or place, lieth, at their general or quarter sessions of the peace, or at some special sessions for the highways, the said justices shall be fully satisfied, by proof upon oath, that the duty hereby directed to be performed, and the money hereby authorised to be collected and received, has been performed, applied, and expended, according to the directions of this act, or shall be fully satisfied that the common highways, bridges, causeways, streets, or pavements, belonging to such parish, township, or place, are so far out of order that they cannot be sufficiently amended and repaired, paved, cleansed, and supported, by the means herein-before prescribed, (notice being first given (No. XIV.) of such intended application at the church or chapel of such parish, township, or place, on some *Sunday* preceding such quarter or special sessions, or if the place be extraparochial, notice in writing being first given of such intended application to some of the principal inhabitants residing in such extraparochial place, a week at least before such general or special sessions); then, and in any of the said cases, an equal assessment upon all and every the occupier of lands, tenements, woods, tithes, and hereditaments, within any such parish, township, or place, shall or may be made and collected by such person and persons, and allowed in such manner as the said justices, by their order, (No. XV.) at such general or special sessions, shall direct and appoint in that behalf; and the money thereby raised shall be employed and accounted for, according to the orders and directions of the said justices, for and

If the duty and the money before authorised to be raised shall not be sufficient, the justices may order an assessment:

(No. XIV.)

(No. XV.)

13 G.3. c.78. towards the amending, repairing, paving, cleansing, and supporting such highways, causeways, streets, pavements, and bridges from time to time, as need shall require.

but such assessment, with the other, for buying materials, &c. not to exceed 9*d.* in the pound in any one year.

§ 46. Provided, that the assessment herein-last before authorised, and the assessment herein-before authorised, for buying materials, making satisfaction for damages, erecting guide-posts, and paying the surveyor's salary, shall not together, in any one year, exceed the rate of nine-pence in the pound of the yearly value of the lands, tenements, woods, tithes, and hereditaments so to be assessed.

An assessment of 6*d.* in the pound may also be made in the extraordinary case pointed out by section 16. *ante*, p. 860, 861.

54 G.3. c.109. And by stat. 54 *G.*3. *c.*109. § 1. after reciting that whereas by 13 G.3. *c.* 78. § 45. the justices of the peace at their general quarter or special sessions for the highways are empowered to allow certain assessments to be made and collected for the maintenance and repair of the highways: and whereas it has been found by experience, that the assessments which are authorised by that act, are not sufficient for the purposes to which the same are therein directed to be applied; it is enacted, that if upon the application of the surveyor of the highways of any parish, township, or place, to the justices of the peace at their general or quarter sessions, or at a special sessions for the highways, the said justices shall be fully satisfied that the common highways, bridges, causeways, streets, or pavements, belonging to such parish, township, or place, are so far out of order that they cannot be sufficiently amended and supported by the means in the said herein-before recited act of the 13 *G.*3. prescribed, and by the assessments therein authorised to be made and collected, it shall and may be lawful for the said justices to authorise, order, and direct an additional assessment to be made on such parish, township, or place (over and above all the assessments by the said act authorised to be made and collected); which said additional assessment shall be levied and collected by the same means, and in the same manner and form as is directed for the levying and collecting the assessments made under the authority of the said herein-before recited act, and upon the same persons as are therein declared to be liable to be rated to the said assessments.

Upon application of surveyor of the highways, justices may direct an additional assessment.

Notice of such application to be given. (No. XIV.)

§ 2. Provided, that notice (No. XIV.) of such intended application shall be first proved before the said justices, upon the oath of the surveyor making such application, to have been given at the church or chapel, on two *Sundays* preceding such general or quarter sessions, or special sessions for the highways; or, in townships or places where there are no churches or chapels, to have been stuck up in writing in two or more conspicuous places within the said townships or places, for one week at least previous to such general or quarter sessions, or special sessions for the highways; or, in extraparochial places, to have been given in writing to some of the principal inhabitants residing in such extraparochial place, a week at least before such general or quarter sessions, or special sessions for the highways, in order that any person or persons liable to be rated to the assessment intended to be applied for, may attend at such general or quarter sessions, or special sessions, if they shall think fit; there to state to the said

justices any objections which he, she, or they may have to the making and collecting of such assessment. 54 G.3. c.109.

§ 3. Provided, that the assessment herein authorized shall not exceed the rate of 1*s*. 9*d*. in the pound on the actual value at the time of making such additional assessment. Limiting the amount of assessment.

§ XIII. Penalty of hindering the Execution.

[13 *G*. 3. c.78. § 71.]

By stat. 13 *G*. 3. *c*. 78. § 71. In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this act, or make any rescue of the cattle or other goods distrained by virtue of this act; or if any constable, headborough, or tithingman shall refuse or neglect to execute or obey any warrant or precept granted by any justice of the peace, pursuant to the directions of this act, every such person offending therein, and being convicted thereof by a justice of the peace, shall, for every such offence, forfeit any sum not exceeding 10*l*., nor less than 40*s*., at the discretion of the justice before whom he or she shall be so convicted; to be paid to the surveyor of the highways for the parish, township, or place where the offence was committed, to be laid out in the repair of the highways: and in case he or she do not forthwith pay, or secure to be paid, the said forfeiture, after such conviction, then it shall and may be lawful for such justice of the peace to commit such person or persons to the common gaol, or house of correction, of the limit where such offence shall be committed, there to remain for any time not exceeding three months, unless the said forfeiture shall be sooner paid.

13 G.3. c.78. Persons resisting the execution of this act, or constables refusing to obey the warrant of a justice of peace, to forfeit not exceeding 10*l*. nor less than 40*s*.

§ XIV. Penalty on the Surveyor for Neglect of Duty.

[13 G. 3. c. 78. § 50.]

By stat. 13 *G*. 3. *c*. 78. § 50. If any surveyor, after his acceptance of the office, shall neglect his duty in any thing required of him by this act, for which no particular penalty is imposed, he shall forfeit, for every such offence, any sum not exceeding 5*l*., nor less than 10*s*., at the discretion of the justice or justices having jurisdiction therein. Where no penalty is imposed.

§ XV. Surveyor's Account.

[13 G. 3. c. 78. § 48.]

By stat. 13 *G*. 3. *c*. 78. § 48. (1) The surveyor for every parish, township, or place, shall carefully and diligently collect, or cause to be collected, the several assessments, forfeitures, penalties, sums of money, and compositions, directed and allowed to be received within the same by this act, within the year for which he is appointed surveyor; To collect the assessments within the year.

(2) And shall keep one or more book or books, in which he shall fairly enter a just, true, and fair account of all such money as shall have come to his hands, or to the hands of the said assistant, in respect of such parish, township, or place, by To keep a book and enter account of monies received and paid;

13 G.3. c.78. virtue and for the purposes of this act, and to whom, and on what occasion, he hath paid or applied the same;

and of monies due; (3) And shall also enter in such book a list of all such sums of money as shall then remain due and owing from any person or persons in respect of the payments, compositions, assessments, penalties, or forfeitures;

and of implements; (4) And also an account of all tools, materials, implements, and other things provided, or to be provided, by order of the inhabitants, at a vestry or other public meeting, for the repair of the highways, at the public expence of such parish, township, or place;

and produce the book at a public meeting; (5) And shall produce the book and the assessments made within that year, for the purposes of this act, unto the inhabitants at a vestry, or other meeting to be held for that purpose, within 15 days before the special sessions to be holden *in the week next after Michaelmas quarter sessions;* (*Vide* stat. 55 *G.* 3. *c.* 68. § 6. *ante*, § II. p. 814.) to the intent that the said accounts, assessments, and lists may be inspected by the said inhabitants.

and verify his accounts upon oath before a justice; (6) And after the said books and assessments shall have been produced at such meeting, he shall take the same to such justice, for the limit wherein such parish, township, or place doth lie, and on such day, and at such hour as shall be agreed upon at such meeting, some day after the said meeting, and before such *last-mentioned special sessions;* (*Vide* 55 *G.* 3. *c.* 68. § 6. *ante*, § II. p. 814.) and then and there verify such account, or any part thereof, upon oath, (No. IX.) if required.

(No. IX.)

(No. X.) which may be allowed by the justice, or postponed to the special sessions. (7) And such justice may allow such account (No. X.), if he finds it just, or postpone it until such special sessions, if he finds cause for so doing, in which case it may be settled and allowed at such special sessions, after the parts objected to by such justice shall have been explained and verified by proper evidence, to the satisfaction of the justices at such special sessions; and in case any articles contained in such accounts shall not be explained and proved to the satisfaction of such justices, they may disallow the same.

Clerks' fee. (8) For the account examined and taken, and oath administered, the justices' clerks shall have the sum of 1*s.* and no more; and if any person or persons shall receive any greater fee, he shall forfeit 10*l.* for every offence.

Books then to be delivered to a churchwarden or overseer, or principal inhabitant, and a duplicate thereof to the succeeding surveyor; also all monies, tools, &c. (9) When the said accounts shall be so settled and allowed, or disallowed as aforesaid, all such books and assessments shall be transmitted to the churchwarden or overseer of the poor of such parish, township, or place, or, if the place be extraparochial, then to some principal inhabitant thereof, to be kept for the use of such parish, township, or place; and the said surveyor shall forthwith deliver a duplicate of such book and account, together with all sums of money as shall remain in his hands, and likewise all tools, materials, implements, and other things as aforesaid, to the succeeding surveyor, in case any new surveyor shall be appointed; or retain the same in his hands, and account for them in his next account, if he shall be continued surveyor in the succeeding year.

Succeeding surveyor may collect arrears. (10) The succeeding surveyor may, and is hereby authorised and required to recover, collect, and receive all sums of money due and owing as aforesaid, by all such ways and means, as fully and effectually to all intents and purposes as the preceding sur-

veyor could or ought to have recovered, collected, or received the same. 13 G.3. c.78.

(11) And if such surveyor shall neglect to provide such book or books, or to enter such respective accounts and lists therein, or to deliver the said book or books, and such duplicate thereof, and such assessments, tools, materials, implements, and other things, in manner aforesaid, he shall forfeit not exceeding *5l.*, nor less than 40*s*. (No. LVI.) And in case he shall make default in the paying or accounting for the money so remaining in his hands, within the time, and according to the directions aforesaid, he shall forfeit double the value of the money which shall be adjudged by the said justices to be in his hands. Surveyor neglecting his duty. Penalty. (No. LVI.)

(13) If the surveyor shall die before such accounts and lists be made out, or such monies, book, assessments, tools, materials, and implements shall be so delivered and paid, his executors or administrators shall make out, pay, and deliver the same, in like manner, and under the like penalty, as the surveyor is hereby made subject and liable to. Surveyor dying.

No appeal lies to the quarter sessions against the allowance of the accounts of a surveyor of the highways. *R.* v. *Just. of the West Riding of Yorkshire*, 5 *T. R.* 629. *R.* v. *Mitchell*, 5 *T. R.* 701. *S. P.* *Et vide post*, § XIX. No appeal lies to the sessions.

§ XVI. Presentment or Indictment of Highways in general.

[13 G.3. c.78. § 65, 66.]

(And see *ante*, § IV. 3. *Prescription.*)

(No. XXXII.) (No. XXXII.)

All defects of repairs of highways shall be presented in the county where they lie, and not elsewhere.

A presentment by a justice of the peace under stat. 13 *G.* 3. *c.* 78. § 24. of a nuisance in a highway must expressly allege the offence to be done *against the form of the statute*. *R.* v. *Winter*, 13 *East*, 258.

It is not enough to state that the justice, *by virtue of the act*, *&c.*, presented, &c. S. C.

If a parish lie in two distinct counties, an indictment must be brought against the whole parish. It was held, indeed, in a case in 5 *Burr.* 2507., that in such a case the indictment should be against that part of the parish in which the road lies. See *R.* v. *Broughton*, *ante*, § IV. 3. Parish lying in two counties.

But it has been more recently decided, that if part of a parish be situate in one county and the rest in another, and a highway lying in one part be out of repair, an indictment against the inhabitants of *that part only* is bad; and that the indictment should have been against the whole parish. *R.* v. *The Inh. of Clifton*, 5 *T. R.* 498.

And it appears to have been always considered that the indictment under such circumstances must be preferred in that county wherein the ruinous part of the road lies. *R.* v. *Inh. of Clifton*, 5 *T. R.* 498. *R.* v. *Weston*, 4 *Burr.* 2507.

In every indictment against a parish for not repairing a highway, there are three essential averments: the first, that the road is a highway; the second, that it is out of repair; and the third, that

it is situated in the parish. 2 *Stark. C. P.* 693, note (*m*). 1 *Russ.* 478. S. P.

If the highway be not alleged in a presentment or indictment to lie in the parish indicted, the parish is not bound to repair it, and such presentment or indictment is erroneous. *R.* v. *Hartford*, 1 *Cowp.* 111.

Must shew it to be a highway.

The indictment must shew that the way is common to all the king's people; for which cause, it hath been resolved that an indictment for a nuisance to a horseway, without adding that it is a highway, is naught. 1 *Haw. c.* 76. § 89.

The length and breadth of this way, and from whence and whither, are necessary to be ascertained in these indictments; but I do not remember any authority that holds it necessary to say it is a highway, for this or that particular carriage; for if it be a common highway, it is a highway for all manner of things. *Per* Ld. *Hardwicke*, C. J. *R.* v. *Hatfield*. *Cas. temp. Hardw.* 315.

Need not be shewn when it became a highway.

In *Aspinall* v. *Brown*, 3 *T. R.* 265., the court of K. B. held that, in indictments for nuisances to highways, it is not necessary to state the highway to have been such "*from time whereof the memory of man is not to the contrary*," or "from time immemorial." It is sufficient to state, in a compendious manner, *that it is a highway*. See also 2 *Saund.* 158 *b.* (*n.*) 4.

Not necessary to shew the places from and to which it leads.

It is more safe in the indictment to shew both the place *from* which, and also the place *to* which the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been disallowed. However, it seems certain, that there is no necessity to shew that a highway leads to a market-town, because every highway leads from town to town. 1 *Haw. c.* 76. § 86.

And it has been expressly decided, that in pleading a public highway, it is not necessary to state the places *from* and *to* which the way led, though it is otherwise in the case of a private way; nevertheless, if a defendant will state the *termini* in his justification, he is bound to prove them. *Rouse* v. *Bardin and others*, 1 *H. Blac.* 351. 2 *Stark. C. P.* 693. n. (*l.*)

Place where.

It is necessary in the indictment expressly to shew in what place the nuisance complained of was done; for which cause an indictment for stopping a way at *D.* leading from *D.* to *C.* is not good; for it is impossible that a way leading from *D.* should be in *D.*, and no other place is alleged. 1 *Haw. c.* 76. § 87.

R. v. *Inh. of Gamlingay*, 3 *T. R.* 513. 1 *Leach*, 528. This was an indictment against the parish of *Gamlingay*, for not repairing a highway leading *from* the parish of *Hatley*, *St. George*, *towards and unto* the parish of *Gamlingay*, both in *Cambridgeshire*, which was determined to be bad; for the road is described as leading *from Hatley unto Gamlingay*, which excludes *Gamlingay*. It was also ruled that that defect was not aided by a subsequent allegation that *a certain part of the same highway* called *H.* situate in *the said parish of* Gamlingay, was in decay, &c.; and it has been decided that *from* and *to* are both exclusive.

Against particular persons.

It hath been adjudged that an indictment against particular persons must specially charge them every one. 1 *Haw. c.* 76. § 92.

Must set forth how much is out of repair.

It ought also certainly to shew, to what part of the highway the nuisance did extend; as by shewing how many feet in length and how many feet in breadth it contained, or otherwise the defendant

will never know the certainty of the charge against which he is to make his defence, nor will the court be able from the record to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and it hath been resolved that the place is not sufficiently ascertained by shewing that it contained so many feet in length and so many in breadth, by *estimation*. 1 *Haw.* c. 76. § 88.

Must set forth the fact clearly.

Also the fact alleged must be expressed in such proper terms, that it may clearly appear to the court to have been a nuisance; and for this cause it hath been resolved, that a presentment for *diverting* a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, howsoever it be *obstructed*, and a new way made in another place. 1 *Haw. c.* 76. § 91.

Persons indicted to have notice.

It seems to be implied in the construction of all penal statutes, that no one ought to be convicted of any offence against them without having notice of the accusation made against him, and an opportunity of defending himself: and therefore it seems certain that generally no one ought to be punished for any of the above-mentioned offences, without being called upon to answer for himself, and having liberty to traverse the matters alleged against him. 1 *Haw. c.* 76. § 83.

Plea by a parish. By an individual.

Upon an indictment against a parish for not repairing, they can give nothing in evidence upon the plea of *not guilty*, but that the way is in repair; but if it be against a particular person, he may give evidence that others ought to repair it. 1 *Mod.* 112. *R.* v. *Ireton, Comb.* 396.

The same point was also ruled in *R.* v. *the Inhabit. of the City of Norwich*, 1 *Str.* 177. 110. 183, 4.; where *Eyre* J. said, if a man would discharge himself on a particular account, he must plead it specially; but not where the common right is his defence. If a man is charged to repair *ratione tenuræ*, he may throw it upon the parish by the general issue.

The defendants ought not to plead that they ought not to repair, without shewing who ought. 1 *Haw. c.* 76. § 93. To this point see *R.* v. *Inhab. of Bridekirk*, ante, § IV. 3. p. 827.

Where a statute enacted that the paving of a particular street should be under the care of the commissioners, and provided a fund to be applied for that purpose, and another statute, which was passed for paving the streets of the parish, contained a clause that it should not extend to the particular street, Ld. *Ellenborough* C. J. held, that the inhabitants of the parish were not exempted from their common law liability to keep that street in repair; that the duty of repairing might be imposed upon others, and the parish be still liable; and that the parish were under the obligation, in the first instance, of seeing that the street was properly paved, and might seek a remedy over against the commissioners, *R.* v. *Inhab. of St. George's, Hanover Square*, 3 *Camp.* 222.

And Mr. *Hawkins* says, that if a particular person be bound to repair a highway, either by inclosure or by prescription, the parish cannot take advantage of it upon the plea of *not guilty*, but ought to set forth their discharge in a special plea. 1 *Haw. c.* 76. § 9.

It is no excuse for the inhabitants of a parish, being indicted at common law for not repairing the highways, that they have done all that is required of them by statute; for since these sta-

tutes are wholly in the affirmative, and made in aid of the common law, and to supply the defects thereof, they shall not be construed to abrogate any provision thereby made for these purposes, 1 *Haw. c.* 76. § 18.

Fine.

The defendants shall not be discharged by submitting to a fine, but a *distringas* shall go *in infinitum* till they repair. 1 *Haw. c.* 79. § 94.

13 G. 3. c. 78. Inhabitants at a meeting may agree to prosecute an indictment. (No. LVIII. — LXIII.)

By stat. 13 *G.* 3. *c.* 78. § 65. If the inhabitants of any parish, township, or place, shall agree at a vestry or public meeting, to prosecute any person by indictment (vide No. LVIII. and the five following forms) for not repairing any highway within such parish, township, or place, which they apprehend such person was obliged by law to repair, or for committing any nuisance upon any highways, or shall agree at such vestry meeting to defend any indictment or presentment preferred against any such parish, township, or place, it shall and may be lawful for the surveyor of such parish, township, or place, to charge in his account the reasonable expences incurred in carrying on or defending such respective prosecutions, after the same shall have been agreed to by such inhabitants at a vestry or public meeting, or allowed by a justice of the peace within the limit where such highway shall be; which expences, when so agreed to, or allowed, shall be paid by such parish, township, or place, out of the fines, forfeitures, compositions, payments, and assessments, authorised to be collected and raised by virtue of this act.

The notice required for holding vestries or public meetings. (No. XXXI.)

And by § 66. In all cases where a vestry or public meeting of the inhabitants of any parish, township, or place, is authorised or directed by this act, there shall be public notice given of the day, hour, and place, of holding the said meeting, at the church or chapel of such parish, township, or place, on the *Sunday* next preceding such meeting, and also notice thereof in writing, (No. XXXI.) specifying the purpose of such meeting, fixed at the same time upon the door of such church or chapel, and the same shall not be held till three days at least after such notice given; and if there be no church or chapel, the like notice of such meeting shall be given in writing, and put up at the most public place therein, three days at least before such meeting.

Court may award costs to the prosecutor or defendant upon an indictment or presentment.

§ 64. It shall and may be lawful for the court before whom any indictment or presentment shall be tried for not repairing highways, to award costs to the prosecutor, to be paid by the person or persons so indicted or presented, if it shall appear to the said court that the defence made to such indictment or presentment was frivolous; or to award costs to the person indicted or presented, to be paid by the prosecutor, if it shall appear to the said court that such prosecution was vexatious.

It has been held, that it is a matter to be determined by inquiry whether a person is or is not the prosecutor within this section of the statute; and that a court of quarter sessions, before whom a parish is acquitted upon the trial of an indictment for not repairing a highway, may, by their order, award *C.* and *E.* to pay costs to the parish, although the names of *C.* and *E.* be not on the back of the indictment, and although the indictment originated in a presentment of *A.* and *B.* constables, whose names are on the indictment; and it was also held to be enough if the order is entitled as in the prosecution of *C.* and *E.* without showing further that *C.* and *E.*

are prosecutors; and that it need not appear on the face of the order that the indictment was tried, if that appear by the record of the procedings; and also that the order is good in form if it be for the payment of the costs to the solicitor of the parish. *R.* v. *Commerell and Ellis*, 4 *M.* & *S.* 203. 13 G.3. c.78.

That the defence was frivolous] *R.* v. *the Inh. of Clifton*, 6 *T. R.* 344. The defendants were indicted for not repairing a road. On the trial before *Buller* J. they were convicted, and he certified on the back of the record that the defence was frivolous, without also awarding costs in express terms. But the Court were clearly of opinion that there was no precise form of words to be used, and that this certificate was in effect an awarding of the costs.

R. v. *The Inh. of Chatterton*, 5 *T. R.* 272. An indictment for not repairing a high road having been removed by *certiorari*, went down for trial to the assizes, when the defendants were acquitted for want of prosecution. *Wood* moved for a rule on the prosecutor to compel him to pay the defendants their costs, on the ground that this was a *vexatious* prosecution, under the above act of 13 *G.* 3. *c.* 78. But *per Curiam:* The statute only gives the court "*before whom the indictment is tried*" power to award costs. An application should therefore have been made to the judge at *Nisi Prius*, who might have awarded costs to the defendants; but we have no such power. Rule refused.

New trial refused after a verdict of not guilty, upon an indictment for not repairing a road, where the verdict does not bind the right.

R. v. *the Inh. of Burbon*, *M.* 57 *G.* 3. 5 *M.* & *S.* 392. Indictment for non-repair of a highway. Plea, not guilty. Upon the trial before *Wood*, B. at the *Westmoreland Sum. Ass.* 1816, there was a verdict of not guilty. And now, *Scarlett* moved for a new trial, upon the ground that the verdict was against all the evidence; and he said, that the prosecution was for the purpose of trying a civil right only. But *per* Ld. *Ellenborough* C. J. In general, the rule is not to grant a new trial in a criminal proceeding after a verdict of not guilty. And inasmuch as the right will not be bound on the plea of not guilty, we do not think it would be proper to break into the general rule on the suggestion that the prosecution was merely intended to determine a civil right. *R. R.*

§ XVII. Presentment by a Justice.

[13 G. 3. c. 78. § 24.]

(*Vide ante*, p. 875.)

13 G.3. c.78. Justices may present on their own view.

By stat. 13 *G.*3. c. 78. § 24. every justice of assize, justices of the counties palatine of *Chester*, *Lancaster*, and *Durham*, and of the great sessions in *Wales*, shall have authority by this statute upon his or their own view, and every justice of the peace either upon his own view, or upon information on oath given to him by any surveyor of the highways, to make presentment (No. XXXII.) at their respective assizes, or great sessions, or in the open general quarter sessions of such respective limit of any highway, causeway, or bridge not well and sufficiently repaired and amended, or of any other default or offence committed and done contrary to the provision and intent of this statute; *Vide* 2 *Saund.* 157. *et seq.* (No. XXXII.)

And all defects in the repair thereof shall be presented in such jurisdiction where the same do lie, and not elsewhere;

And every such presentment shall be as effectual, as if the same had been presented and found by the oaths of twelve men;

13 G. 3. c. 78.

May be traversed.

Saving to every person affected by such presentment his lawful traverse to the same, as well with respect to the fact of non-repair as to the duty or obligation of repairing the said highways, as they might have had upon any indictment of the same presented and found by a grand jury;

Sessions may order the prosecution to be carried on at the expence of the division.

The justices at their general quarter sessions, or the major part of them, may, if they see just cause, direct the prosecutions upon such presentment as shall be made at the quarter sessions to be carried on at the general expence of such limit, and to be paid out of the general rates within the same;

And for every such default so presented, the justices of assize, counties palatine, and great sessions, at their respective courts, and the justices of the peace at their general quarter sessions shall have authority to assess such fines as to them shall be thought meet.

Certiorari.

And no such presentment, nor any *indictment* for any such default or offence, shall be removed by *certiorari*, or otherwise, out of such jurisdiction till the same be traversed, and judgment thereupon given; except where the duty or obligation of repairing may come in question.

In the case of *R.* v. *Kettleworth*, 5 *T. R.* 33., it was determined that where a justice of peace *indicts* a road for being out of repair, (the indictment being afterwards removed by *certiorari*), he is entitled to costs under stat. 5 & 6 *W. & M. c.* 11. § 3. if the defendant be convicted.

And according to *R.* v. *The Inh. of Penderryn*, 2 *T. R.* 260., where a magistrate makes a presentment of a road, as being out of repair, and another person, by the magistrates' consent and approbation, sues out a *certiorari*, the *certiorari* is well sued out, though the Court will look to the magistrate as the person responsible. He is answerable for all the costs, if the presentment should turn out to be improper.

And in *R.* v. *the Inh. of Taunton St. Mary*, 3 *M. & S.* 465., it was held that upon an indictment against a parish for not repairing a highway, the right to repair may come in question so as to entitle the parish to remove it by *certiorari*, though the parish plead *not guilty* only, it being stated in an affidavit filed by the defendants, that on the trial of the indictment, the question, whether the parish were liable to repair, and the right to repair would come in issue. It was also held that several persons were entitled to costs under it as prosecutors of an indictment, removed by *certiorari*, for not repairing a highway; one, as constable of the manor within which the highway lay; the others, as parties grieved; they having used the way for many years in passing and repassing from their homes to the next market town, and being obliged, by reason of the want of repair, to take a more circuitous route.

A new trial is not allowed after acquittal.

The general rule of a new trial never being allowed where the defendant is acquitted in a criminal case, has been held to prevail in a prosecution for not repairing a highway, though such prosecution is usually carried on for the purpose of trying or enforcing a civil liability. *R.* v. *Mann*, 4 *M. & S.* 337. *R.* v. *Cohen & Jacob*, 1 *Stark. N. P.* 516. *See* 1 *Russ.* 483. 484. *R.* v. *Burbon*, *ante*, p. 879.

But where the defendants had been acquitted on an indictment for not repairing a road, the court of K. B. though they refused a

new trial, yet, upon very special circumstances, suspended the entry of the judgment, so as to enable the parties to have the question reconsidered upon another indictment, without the prejudice of the former judgment. *R.* v. *The Inhab. of Wandsworth*, 1 *B. & A.* 63.

§ XVIII. Levying of Assessments, Fines, and Forfeitures.

[13 G. 3. c. 78. § 47. 67, 68. 72, 73, 74, 75, 76, 77, 78, 79, 80.]

By stat. 13 *G.* 3. *c.* 78. § 67. If any person shall refuse or neglect to pay the sum or sums assessed upon him, by any assessment to be made in pursuance of this act, within ten days after demand thereof made, the same shall and may be levied by the surveyor, or any other person or persons authorized by warrant (Nos. XXXVII. XXXVIII.) under the hand and seal of one justice of the peace, having jurisdiction therein, by distress and sale of the goods and chattels of the person so refusing or neglecting, rendering the overplus to the owner or owners thereof, the necessary charges of making such distress and sale being first deducted; and in default of such distress, it shall be lawful for any such justice to commit (No. XXXIX.) the person so refusing or neglecting to the common gaol, there to remain until he shall have paid the sum so assessed and the costs and charges occasioned by such neglect or refusal.

13 G. 3. c. 78. Sums assessed may be levied by distress and sale of the offender's goods. (Nos. XXXVII a. XXXVIII.) (No. XXXIX.)

§ 68. The surveyor of any parish, township, or place, shall be deemed in all cases a competent witness, in all matters relative to the execution of this act, notwithstanding his salary may arise in part from the forfeitures and penalties hereby inflicted. See also § 76. *post*, p. 884.

Surveyor may be a competent witness.

The inhabitants of a parish, indicted for not repairing a highway, are not competent to give evidence for the defendants. *R.* v. *The Inhab. of Wandsworth*, 1 *B. & A.* 66. *See also* 15 *East*, 474. 1 *Phill. Ev.* 6th *Ed.* 119.

In a late case of an indictment for not repairing a highway, the prosecutor was examined as a witness for the prosecution, and no objection was taken to his competency; and it seems that a prosecutor in such a case is a competent witness; for though the court is authorised to award costs against him in case the proceeding shall appear to have been vexatious, yet the court would scarcely presume, in the first instance, that the prosecutor's conduct had been vexatious, so as to raise an objection to his competency; especially after the finding of a bill by the grand jury. *R.* v. *Hammersmith*, 1 *Stark. N. P.* 358. *note* (*a*).

By stat. 13 *G.* 3. *c.* 78. § 47. No fine, issue, penalty, or forfeiture, for not repairing highways, or not appearing to any indictment or presentment for not repairing the same, shall be returned into the exchequer or other court, but shall be levied by and paid into the hands of such person or persons residing in or near the parish, township, or place where the road shall lie, as the court imposing such fines, &c. shall order, to be applied towards the repair and amendment of such highways. And the person or persons so ordered to receive such fine shall receive, apply, and

Fines.

13 G.3. c.78. account for the same, according to the direction of such court, or in default thereof, shall forfeit double the sum received.

§ 47. If any fine, issue, penalty, or forfeiture to be imposed on any such parish, township, or place for not repairing the highways, or not appearing as aforesaid, shall be levied on one or more of the inhabitants of such parish; township, or place, then such inhabitant or inhabitants shall and may make his or their complaint to the justices of the peace at their special sessions; and the said justices are hereby empowered and authorized, by warrant under their hands and seals, to cause a rate to be made, according to the form and manner herein last before prescribed, for the reimbursing such inhabitant or inhabitants the monies so levied on him or them as aforesaid; which rate so made, and confirmed by any two justices, shall be collected and levied by the surveyor of the highways of such parish, township, or place, so presented or indicted as aforesaid; and the said surveyor shall, within one month next after the making and confirming the rate aforesaid, collect, levy, and pay unto such inhabitant or inhabitants the money so levied on him or them as aforesaid.

Only one fine can be imposed for the non-repair of a highway.

R. v. *The Inhab. of the Parish of Old Malton, Yorkshire Sum. Ass. 9th Aug.* 1794, *cor. Lawrence J.*, 4 *B. & A.* 470. (*n.*) This was an indictment for not repairing a highway. The defendants had submitted to a fine, which had been apportioned between the parishioners and the trustees of the turnpike [the road indicted being turnpike] pursuant to the power given by the general turnpike act. *Holroyd* applied for a further fine, the whole fine being laid out on the way, and the way being still out of repair. *Lawrence* J. doubted his power to give any further fine, on the ground that the court had given their judgment; and though *Salk.* 358. (*vide S. C.* 6 *Mod.* 163.) states that the judgment is not at an end by the defendants coming in and submitting to a fine, and that if the road is not put in repair, *writs of distringas* shall issue against the defendants till the road is completed: he held, that those writs are now the only remedy on the present indictment; that the fine is the punishment for the neglect and offence of which the defendants are indicted: and though the court may compel an actual repair, yet the punishment has been inflicted, and they cannot inflict a further punishment or fine; that the parish may be again indicted, and a fine imposed and apportioned on such indictment. *Vide also* 1 *Hawk. c.* 76. § 94., and *R.* v. *The Inhab. of Machynlleth and Penegoes, tit.* "Bridges," Vol. I.

R. v. *Townshend and Another*, 2 *Dougl.* 420. Where a parish consisting of two districts, which were bound to repair separately, having been convicted for not repairing a road in one of the districts; the other district not having had notice of the indictment; the court considered it as substantially the conviction of the one district; and a fine having been levied on an inhabitant of the other, they granted a *special mandamus* for a rate to be levied on the district bound to repair the indicted part of the road.

When it is known that roads are repairable separately by different districts, it is a fraud in those who undertake, on behalf of the district liable, the defence of an indictment against the parish, not to put in a special plea to that effect, although the parish may have notice of the existence of the indictment. *Per Lord Ellenborough* C. J. *in R.* v. *Justices of Lancashire*, 12 *East*, 369.

R. v. *Justices of Lancashire*, 12 *East*, 366. An indictment was found at the *Lancaster* sessions in 1801, against the parish of *Eccles*, for not repairing a road. *Eccles* is divided into five townships, and each township into several hamlets: *Barton* (one of the townships) was divided into 12: each hamlet had immemorially repaired its own highway: the other four townships did not interfere, but *Barton* alone undertook the defence. The parish of *Eccles* were found guilty, and a fine of 400*l.* imposed and levied upon two persons of the parish. Applications were made from time to time on their behalf to the justices for a rate on the parish of *Eccles* to reimburse them, but without effect. In 1808 application was again made for a rate, and in 1809 all the circumstances were laid before the sessions, and they ordered the balance of the money remaining in hand (148*l.* 17*s.* 10*d.*) to be paid over to these two persons; but the justices refused to make any order for reimbursement as to the rest of the 400*l.*, which had been actually expended. A *mandamus* was now moved for to the justices of the county to cause a rate to be made pursuant to stat. 13 *G.* 3. *c.* 78. § 47. for reimbursing them as to that remainder: this application being eight years after the original preferring of the indictment, it was refused, the interval being so great, and the inhabitants being in a great proportion changed; and *Le Blanc* J. said, those who were obliged to pay the money in the first instance ought to have applied within reasonable time for reimbursement, and not have waited till a great change had taken place in the body of the inhabitants who were to contribute to it.

13 G.3. c.78. The court of K. B. refused a *mandamus* to make any rate for reimbursement under 13 G.3. c. 78. § 47. after the lapse of eight years from the levy.

By stat. 13 *G.*3. c.78. § 72. All penalties and forfeitures by this act imposed for any offence against the same, and all costs and charges to be allowed and ordered by the authority of this act, (the manner of levying and recovering of which is not hereby otherwise particularly directed,) shall be levied by distress and sale of the goods and chattels of the offender, or person liable or ordered to pay the same respectively, by warrant (Nos. XXXIII. XXXIV. XXXV. XXXV. a., XXXVI.) under the hand and seal of some justice of the peace for the limit where such offence, neglect, or default shall happen, or such order for payment of such costs or charges shall be made, rendering the overplus of such distress (if any be) to the party or parties, after deducting the charges of making the same; which warrant such justice is hereby impowered and required to grant, upon conviction of the offender by confession, or upon the oath of one or more credible witness or witnesses, or upon order made as aforesaid; and the penalties and forfeitures, when so levied, shall be paid, the one half to the informer, and the other half to the surveyor of the highway where such offence, neglect, or default shall happen; to be applied towards the repair thereof, unless otherwise directed by this act; but in case the surveyor shall be the informer, then the whole shall be employed towards the repair of such highway; and in case such distress cannot be found, (No. XXXVII.) and such penalties and forfeitures, or the said costs and charges, shall not be forthwith paid, it shall and may be lawful for such justice, and he is hereby authorized and required, by warrant (No. XXXIX.) under his hand and seal to commit such offender or offenders, or person or persons, liable to pay the same respectively, to the common gaol or house of correction of the limit where the offence shall be

Penalties and forfeitures, costs and charges, how to be recovered and applied.

(Nos. XXXIII. XXXIV. XXXV. XXXV. a. XXXVI.)

(No. XXXVII.)

No. XXXIX.

13 G.3. c.78.

How to proceed where the offender lives within another jurisdiction.

committed, or such order as aforesaid shall be made, for any time not exceeding three months, unless the said penalty, forfeiture, costs, and charges, shall respectively be sooner paid; and if such offender or offenders, or person or persons, liable or ordered to pay the same respectively, shall live out of the jurisdiction of the justice hereby authorized to grant such warrant, it shall and may be lawful for any justice of the peace of the limit wherein such person shall inhabit, and every such justice is hereby required, upon request to him for that purpose made, and upon a true copy of the conviction whereby such forfeiture or penalty was incurred, and of the order for the payment of such costs and charges, produced and proved by a credible witness upon oath, by warrant under his hand and seal, to cause the penalty or forfeiture mentioned in such conviction, and the costs and charges mentioned in such order, or so much thereof as shall not have been paid, to be levied by distress and sale of the goods and chattels of such offender or offenders, or person or persons liable or ordered to pay the same respectively, as aforesaid; and if no sufficient distress can be had, to commit such offender or offenders, or person or persons, liable as aforesaid, to the common gaol, or house of correction of such limit, for the time, and in manner aforesaid.

Distress as to penalties, not to be made till six days after conviction.

§ 73. Provided, that no warrant of distress, unless otherwise directed by this act, shall be issued for levying any penalty or forfeiture, costs or charges, until six days after the offender shall have been convicted, and an order made and served upon him for payment thereof.

Penalties above 40s. may be sued for.

§ 74. Provided also, that every prosecutor or informer may, at his election, sue for and recover any forfeiture or penalty imposed by this act, which shall amount to 40*s.* or upwards (the manner of recovery thereof not being particularly directed by this act), either in the manner hereinbefore directed, or by action of debt in any of H. M.'s courts of record, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of ———, being forfeited by an act passed in the 13th year of the reign of his present majesty, intituled, "*An act to explain, amend, and reduce into one act of parliament, the statutes now in being for the amendment and preservation of the public highways within that part of* Great Britain *called* England, *and for other purposes;*" and the plaintiff, if he recover, shall have double costs.

§ 75. Provided, that there shall be no more than one recovery for the same offence; and that ten days' notice in writing be given to the party offending previous to the commencement of such action; and that the same be brought within one calendar month after the offence committed.

Witnesses.

§ 76. No conviction shall be had, unless upon confession or oath of one witness, or view of the justice.

§ 76. Any inhabitant of any parish, township, or place, in which any offence shall be committed contrary to this act, shall be deemed a competent witness, notwithstanding his or her being an inhabitant of such parish, township, or place.

§ 77. And any justice may administer an oath to any witness or other person, for the better discovery and execution of the several matters or things herein directed to be enquired into and performed by such justice.

§ 78. Where any distress shall be made for any sum to be levied by virtue of this act, the distress shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any default or want of form in the proceedings; nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done by the party distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case. 13 G. 3. c. 78. Irregularity in the proceedings.

§ 79. No person shall recover in any action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made before the action brought; and if no tender hath been made, the defendant by leave may pay into court such sum as he shall see fit, whereupon such proceedings shall be had as in other actions where the defendant is allowed to pay money into court.

§ 80. And no proceedings had in pursuance of this act shall be quashed for want of form, or removed by *certiorari*, or any other process, into any of H. M.'s courts of record at *Westminster*. Certiorari.

§ XIX. Appeal.

[13 G. 3. c. 78. § 80.]

By stat. 13 *G*. 3. *c*. 78. § 80. If any person shall think himself or herself aggrieved by any thing done by any justice or justices of the peace, or other person, in the execution of any of the powers given by this act, and for which no particular method of relief hath been already appointed, every such person may appeal to the justices of the peace, at any general quarter sessions of the peace to be held for the limit wherein the cause of such complaint shall arise, such appellant giving, or causing to be given, notice in writing (No. XL.) of his or her intention to bring such appeal, and of the matter thereof, to the justice, or other person or persons against whom such complaint shall be made, within six days after the cause of such complaint arose, and within four days after such notice, entering into recognizance before some justice of the peace within such limit, with one sufficient surety, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices, at such quarter session; and every justice of the peace, and other person having received notice of such appeal as aforesaid, shall return all proceedings whatsoever had before them respectively touching the matter of such appeal to the said justices, at their general quarter sessions aforesaid, on pain of forfeiting 5*l*. for every such neglect; and the said justices at such sessions, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or apppealed against, as they the said justices shall think proper; to be levied and recovered as hereinbefore directed; and the determination of such quarter session shall be final and conclusive, to all intents and purposes; and no proceedings to be had or taken in pursuance of this act shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process whatsoever, (except as hereinbefore mentioned,) into any of H. M.'s courts of record at *Westminster*; provided

Appeal may be made to quarter sessions by the person aggrieved by any thing done in the execution of this act.

(No. XL.)

No proceedings to be quashed for want of form, or removed by *certiorari*.

13 G.3. c.78. that no such appeal shall be made against any conviction for any penalty or forfeiture incurred by virtue of this act, unless the person convicted shall, at the time of such conviction, if he or she shall be then present, if not, within six days after, give notice of his or her intention to appeal, and at the same time enter into recognizance, with sufficient sureties, to pay such penalty or forfeiture, in case such conviction shall be affirmed upon such appeal; and upon his or her giving such security, the further proceeding for such penalty or forfeiture shall be suspended until such appeal shall be heard and determined.

No appeal lies against the surveyor's accounts.

If any person shall think himself aggrieved] Under this clause it has been holden that no appeal lies against the allowance of the surveyor's accounts. The 80th section only gives an appeal in cases where there is no other remedy. Bnt in this case relief is provided by the 48th section. The books of accounts, after having been examined by the inhabitants at a vestry, are to be taken to one justice, who may allow such accounts, if he please; but if he has any difficulty, he may refer them to the petty sessions, where they are to be examined and allowed, "and when the said accounts shall be so settled and allowed," that is, either by the single justice, or by the petty sessions, they are to be kept for the use of the parish. This mode of allowing the accounts was prescribed for the purpose of preventing any appeal to the quarter sessions. It is immaterial whether the accounts are first taken to one magistrate, and afterwards to the petty sessions; or whether they are taken at once to the petty sessions. In neither case does an appeal lie to the quarter sessions. *R.* v. *Just. of the W. Riding of Yorkshire*, 5 *T.R.* 629., and *R.* v. *W. Mitchell*, *ib.* 701.

Time allowed for appeal against a warrant of distress for a highway rate.

Within six days after the cause of such complaint arose] *R.* v. *Just. of Devon*, 1 *M.* & *S.* 411. A rule was obtained for a *mandamus* to the justices of *Devon* to receive an appeal against a distress for non-payment of a sum assessed under the highway act. — The party assessed having refused to pay, a warrant of distress was signed and granted by two justices on the 4th of *December*, which was executed on the 12th; the party thereupon gave notice of appeal within six days after the 12th *December*. The sessions dismissed the appeal, being of opinion that notice ought to have been given within six days after the *date* of the warrant, not the *execution* of it. It was contended against the motion, that the notice which was directed to be given "*within six days after the cause of complaint arose*," must mean "six days after the date of the *warrant*, which was the cause of complaint, not *the levy*, which was only consequent upon it. It was also objected that the notice merely stated that a distress was made, without disclosing the grounds; upon which it was contended it was irregular. Lord *Ellenborough* C. J. said, Suppose notice of action against a magistrate for taking goods, would it not be sufficient to state that he had taken the goods under a warrant, and that the party intended to bring an action thereupon? The *onus* lies on the other side to show the legality of the distress.—Then as to the time, the party appealing was within six days after he was actually damnified. It is not necessary he should appeal on the warrant; for *non liquet* that it would be proceeded upon.—Rule absolute.

§ XX. Limitation of Actions.

[13 G. 3. c. 78. § 81.]

By 13 *G.* 3. *c.* 78. § 81. Actions for any thing done in pursuance of this act shall be commenced within three calendar months after the fact committed, and be brought within the proper county, and the defendant may plead the general issue, and give this act and the special matter in evidence, and that the same was done in pursuance hereof; and if it so appear, or if such action is brought after the time limited, or is laid in the wrong place, the jury shall find for the defendant, or if the plaintiff is nonsuited, discontinues after appearance, or has judgment against him on demurrer, the defendant shall have treble costs, with the usual remedy to recover the same. *See Roberts* v. *Read and Others*, 16 *East*, 215. 13 G.3. c.78.

The forms of proceedings under this title are specially directed by the several acts to be used upon all occasions, with such additions or variations only as may be necessary to adapt them to the particular exigencies of the case. And no objection shall be made, or advantage taken, for want of form in any such proceedings. A material variation from the form prescribed is fatal, and may be taken advantage of in a collateral proceeding. *Davidson* v. *Gill*, 1 *East*, 64. Forms in the act to be used. See stats. 13 G.3. c.78. 34 G.3. c.64.

Such other forms as appeared requisite have been added.

No. I. Warrant for calling the Meeting of Householders, &c. and for fixing that of the Justices for appointing Surveyors, *Vide* stat. 13 *G.* 3. *c.* 78. § 1. *ante*, p. 815. No. I.

Middlesex. } To the constables, headboroughs, and tithingmen, within the (*hundred, riding, division, liberty,* or *precinct,*) (*as the case shall be*) of ————, in the said county.

IN order to carry into execution an act made in the 13*th year of the reign of his majesty king* George *the third*, for the amendment and preservation of the public highways, *you are hereby severally required forthwith to give public notice to the churchwardens, surveyors of the highways, and householders, being assessed to any parochial or public rate within your respective liberties, that they do assemble on the 22d day of September next, at the church or chapel, or if there shall be no church or chapel, then at the usual place of public meetings within their respective liberties, at the hour of* 11 *in the forenoon; and that the major part of them so assembled do make a list of the names of at least ten persons living therein, who each of them have an estate in lands, tenements, or hereditaments, lying within the same, in their own right, or in right of their wives, of the value of* 10*l. by the year; or a personal estate of the value of* 100*l.; or are occupiers or tenants of houses, lands, tenements, or hereditaments, of the yearly value of* 30*l. And if there shall not be ten persons having such qualifications, then that they do insert in such list the names of so many of such persons as are so qualified, together with the names of the most sufficient and able inhabitants not so qualified, as shall make up the number ten, if so*

many can be found, if not, so many as shall be there resident, to serve the office of surveyor of the highways: And you are also severally required within three days after making the said list to deliver a copy thereof to one of the justices of the peace of the said [hundred, riding, division, &c.] [as the case shall be,] *living in or near the same* [parish, &c.]; *and also to give personal notices to, or cause notices in writing to be left at the places of abode of the several persons contained in such lists, informing them of their being so named, to the intent that they may severally appear before the said justices at their special sessions to be holden at* ——, *within the said* [hundred, &c.] *on the* —— *day of* ——, *now next ensuing, at the hour of* —— *in the forenoon of the same day, to accept such office, if they shall be appointed thereto, or to show cause, if they have any, against their being appointed; and you are likewise to give notice to the present surveyors of the highways, within your respective liberties, to appear at the same time and place, and produce such accounts and lists before the said justices as are required by the said act; and you and each of you are personally to appear before the said justices, at their said special sessions, and then and there severally deliver to the said justices the said original list or lists taken within your respective liberties, and give an account of the execution of this our precept. Given under our hands and seals, the* —— *day of* —— *in the year of our Lord* ——.

No. II.

No. II. List of Persons to be returned to the Justices, *Vide* stat. 13 G. 3. *c.* 78. § 1-5. *ante*, p. 815. 819.

A LIST of the several persons named for surveyors of the highways for the [insert the name of the parish, township, or place], *at a meeting held at* ——, *in the said* ——, *the* —— *day of* ——.

A. B.
C. D. &c.

[This is to be added when a particular person is recommended.]

We whose names are subscribed, being two parts in three of the persons assembled at the meeting aforesaid, do agree in the choice of A. S. *as a fit person to serve the office of surveyor for the* —— *of* [insert the parish, &c.] *aforesaid, and in the allowance to him of* —— *for his trouble in executing the same for the year ensuing; and we do recommend the said* A. S. *to the justices for their appointment accordingly.*

No. III.

No. III. Notice to the Persons contained in the List. *Vide* p. 815.

A. B. *take notice, that you were at a meeting held at* [insert the name of the parish, &c.] *on the* —— *day of* ——, *named as one of the persons to be returned to the justices as fit to serve the office of surveyor for the said* [parish, &c.] *for the year ensuing; and if you have any cause to show why you should not be appointed to serve such office, you must make the same appear before*

the justices, at their special sessions, to be holden at ——, on the —— day of —— next.

A. B. { *Constable, Headborough, or Tithingman,* [as the case shall be.]

No. IV. Order to the Constable, &c. to return to the Justices the Amount of a Sixpenny Assessment. *Vide* stat. 13 *G.* 3. *c.* 78. § 1. *ante*, p. 817. No. IV.

County of ——. To the constable, &c. of ——.

YOU are hereby required to return to us, and the other justices, to be assembled at the special sessions to be held at ——, for the hundred, &c. of ——, in the said county, on the —— day of —— next, the amount of the last assessment of sixpence in the pound, for the use of the highways within your liberty, if any such has been raised; if not, what you apprehend, from the best information you can get, an equal assessment of sixpence in the pound upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within the said liberty, according to their yearly value, will amount to. Given under our hands, this —— day of ——, 18—.

No. V. Return to the Justices of the Amount of a Sixpenny Assessment. *Vide ante*, p. 817. No. V.

To the justices, assembled at their special sessions at ——, the —— day of ——.

IN obedience to your order, I do return and certify, that the last assessment of sixpence in the pound, for the use of the highways within the liberty of ——, amounted to the sum of ——.

[If no assessment of sixpence in the pound has been made, then as under.]

IN obedience to your order, I do return and certify, that no assessment hath been made of sixpence in the pound, for the use of the highways within the liberty of ——; but I apprehend, from the best information which I have been able to get, that an equal assessment of sixpence in the pound, upon all the occupiers of lands, tenements, woods, tithes, and hereditaments, within the said liberty, will amount to the sum of ——.

A. B. (*Constable, &c.*)

No. VI.

No. VI. Appointment of a Surveyor. *Vide* p. 816.

County of ——— { At a special sessions, held at ———, in the hundred of ———, by justices of the peace for the said county, acting within the said hundred, on the ——— day of ———, 18—.

WE do hereby nominate and appoint A. S. *of* [insert the name of the parish, &c. where he lives] *in the said hundred, surveyor* [or, *surveyors*] *of the highways within the said* ———, *for the year ensuing* (*a*): *And you the said* A. S. *are faithfully and truly to execute the said office of surveyor according to the directions of the statute passed in the thirteenth year of the reign of his majesty king* George *the third,* "for the amendment and preservation of the highways;" *an abstract of the material parts of which statute is hereunto annexed. Given under our hands and seals the day and year above mentioned.*

No. VII.

No. VII. Bond from the Surveyor. *Vide* stat. 13 *G.* 3. *c.* 78. § 3. *ante*, p. 818.

WE A. B. *surveyor of the highways for the* [parish, township, &c.] *of* ———, *and* C. D. *of* ———, *are bound to* E. F. *of* ———, *aforesaid, in the sum of* ——— *pounds, to be paid to the said* E. F., *his executors, administrators, or assigns; for which payment we hereby bind ourselves severally, and each of our heirs, executors, and administrators. Dated the* ——— *day of* ———, 18—.

The condition of this bond is such, that if the said A. B., *his executors, or administrators, shall duly and faithfully account for, apply, and pay, all and every the sum and sums of money which shall come to his hands, as surveyor of the highways for the parish, &c. according to the direction and true intent and meaning of the statute made in the thirteenth year of the reign of his majesty king* George *the third,* "For the amendment and preservation of the highways," *then this bond to be void, or else to remain in full force.*

No. VIII.

No. VIII. Appointment of an Assistant to the Surveyor. *Vide* stat. 13 *G.* 3. *c.* 78. § 2. *ante*, p. 817.

Middlesex. { At a special sessions, held at ———, in the hundred of ———, by justices of the peace for the said county, acting within the said hundred, on the ——— day of ———.

WE do hereby nominate and appoint A. S., *a substantial inhabitant of the* ——— *of* ———, *in the said hundred, assistant to* A. B., *whom we have appointed surveyor of the highways for the said* ———. *And you the said* A. S. *are to the best of your skill and*

(*a*) If a surveyor is appointed with a salary, then after the words *year ensuing* add, *and we do allow the said* A. S. *the salary of* ——— *for his trouble.*

judgment to assist the said surveyor, whenever requested by him, in calling in and attending the performance of the statute duty, in collecting the compositions, fines, penalties, and forfeitures, and in making and collecting the assessments, and in making out and serving the notices authorized by the act, passed in the thirteenth year of the reign of his majesty king George *the third,* " For the amendment and preservation of the highways," *and in such other matters and things as shall be reasonably required of you by the said surveyor, in the execution of the office of surveyor, pursuant to the said act; and you are justly and truly to account with, and pay to the said surveyor, or to his order, the money which shall come to your hands by the means aforesaid. Given under our hands and seals, the day and year above mentioned.*

No. IX. Oath to be administered to the Surveyor upon passing his Accounts. *Vide* stat. 13 *G.* 3. *c.* 78. § 48. p. 874. No. IX.

I A. B. *do swear, that the accounts now produced and delivered by me, as surveyor of the highways for the parish, &c. of* ———, *for the last year, are just and true, to the best of my knowledge.*

So help me God.

No. X. Allowance of the Accounts. *Vide* p. 874. No. X.

October, ——.

THESE accounts were examined and allowed before ———.

No. XI. Notice from the Surveyor to remove Nuisances and Obstructions, and to cut Hedges, &c. *Vide* stat. 13 *G.* 3. *c.* 78. § 7. p. 849—851. No. XI.

To *C. D. of* ———.

IN pursuance of the directions given by the act, passed in the thirteenth year of the reign of his majesty king George *the third,* " For the amendment and preservation of the highways," *I* A. B. *surveyor of the highways for the parish, &c. of* ———, *do hereby give you notice, forthwith to remove the dung, [timber, stone, &c.] placed by you in a certain part of the king's highway, lying between* ——— *and* ———, *in the parish, &c. of* ———, *to the obstruction and annoyance of the said highways:* or, [*forthwith to cut, prune, and plash the hedges, and cut or prune the trees, and to open, cleanse, and scour, the several ditches and watercourses, belonging to you*] *in or near the highway, lying between* ——— *and* ———, *to the intent that the water may be drained from the said highway, and that the sun and wind may not be excluded from such highway, to the prejudice thereof. Dated this* —— *day of* ———.

To remove nuisances and obstructions.

To cut and prune hedges, and to cut or prune trees, and to open and scour ditches and watercourses.

A. B.

No. XII.

No. XII. Allowance of Charges and Expences paid by Surveyors, which are to be repaid by the Possessors of the Lands, &c. and Order of the Justices for that Purpose. *Vide* stat. 13 *G.* 3. *c.* 78. § 12. *ante*, p. 850. 852.

Middlesex. } *WHEREAS complaint hath been made unto me,* A. B. *esquire, one of his majesty's justices of the peace for the said county, by the oath of* ———, *surveyor of the highways for the parish of* ———, *in the said county, that* C. D. *of* ——— *having had due notice to cut and prune his hedges, and cleanse and scour his ditches and watercourses, within or adjoining to the public highway, between* ——— *and* ———, *in the said parish of* ———, *hath neglected to do the same within the time required by such notice; and that the said* ——— *hath caused the same respectively to be cut, pruned, cleansed, and scoured, pursuant to the directions of the act, passed in the thirteenth year of the reign of his majesty king* George *the third,* " For the amendment and preservation of the highways," *and hath expended therein the sum of* ———, *as appears by an account now produced to me, which I think a reasonable charge, and do therefore allow the same, and hereby order the said* C. D. *to pay the said sum of* ——— *to the said* ——— *within six days from the time of his being served with this order. Given under my hand and seal, this* ——— *day of* ———.

No. XIII.

No. XIII. Order of a Justice of Peace to make new Drains. *Vide* stat. 13 *G.* 3. *c.* 78. § 13. p. 850.

To *C. D.* of ———, surveyor of the highways for the parish, &c. of ———.

Middlesex. } *WHEREAS complaint hath been made to me,* A. B. *esquire, one of his majesty's justices of the peace for the said county, that the ditch, gutter, or watercourse, for conveying the water from the highway at* ———, *in the parish, &c. of* ———, *in the said county, is not sufficient for that purpose, and that the cleansing and opening the same will not effectually carry off the said water, but that the said highway may be effectually drained, and the water carried off, by making a new ditch or drain through the lands or grounds of* ———, *lying near the same, for the length of* ——— *yards, and the breadth of* ——— *feet; and the said* ——— *having been duly summoned to appear before me, to show cause, if he had any, why the said ditch or drain should not be made, and the said* ——— *not appearing,* [or, *not showing sufficient cause against the same,*] *and it appearing to me that such ditch or drain is necessary, I do hereby order and require you to enter into and upon the said lands of the said* ———, *and there make, or cause to be made, a new ditch or drain, of the length and breadth aforesaid, and of a convenient depth, making or tendering sufficient satisfaction to the said* ———, *for the damages to be done thereby, within one calendar month after the same shall be so made; such damages to be settled and ascertained in manner directed by the act, passed in the thirteenth year of the reign of his majesty king* George *the third,* " For the amendment and preservation of the highways." *Given under my hand, this* ——— *day of* ———.

No. XIV. Notice of Application to be made for an Assessment. *Vide* stat. 13 *G.* 3. *c.* 78. § 45. p. 871. No. XIV.

Middlesex. { *NOTICE is hereby given, that application will be made to the justices of the peace acting for the hundred of* ——— *in the said county, at their special sessions, to be held at* ——— *in the said hundred, on the* ——— *day of* ———, *for an equal assessment to be made, not exceeding* ——— *in the pound, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within the* ——— *of* ———, *for the use and benefit of the highways within the said* ———. *Dated this* ——— *day of* ———.

A. B. Surveyor.

No. XV. Order at a Special Sessions for an Assessment of Sixpence in the Pound. *Vide ante,* stat. 13 *G.* 3. *c.* 78. § 30. 45. p. 870, 871. No. XV.

Middlesex. { At a special sessions for the highways, held at ———, in the hundred of ——— in the said county, the ——— day of ———, by justices of the peace for the said county acting within the said hundred.

UPON application made to us by the surveyor of the highways for the parish, &c. of ———, *and upon evidence given upon oath before us* [*that the duty directed to be performed, and the money authorized to be collected and received by an act, passed in the thirteenth year of the reign of his majesty king* George *the third,* " For the amendment and preservation of the highways," *have been performed, applied, and expended, according to the directions of the said act*]*:* Or, [*We are fully satisfied, that the common highways, bridges, causeways, streets, and pavements, belonging to the parish, &c. of* ———, *are so far out of order, that they cannot be sufficiently amended and repaired, paved, cleansed, and supported, by the means prescribed by the said act.*) *And it appearing to us, that notice hath been duly given of such intended application, according to the direction of the said act, we do hereby order, direct, and appoint, that an equal assessment, not exceeding the sum of* ——— *in the pound, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within the said parish, &c. of* ———, *shall be forthwith made by the said surveyor, and shall be allowed by one justice of the peace for the said hundred, and shall be collected by the said surveyor, and that the money so to be assessed and collected shall be applied for and towards the amending, repairing, paving, cleansing, and supporting such highways, causeways, streets, pavements, and bridges,* [and for buying materials, making satisfaction for damages, erecting guide-posts, and paying the surveyor's salary,] *according to the direction and true intent and meaning of the said act.*

If no assessment has been made for buying materials, &c. this may amount to nine-pence in the pound; but if a sixpence assessment had been made before, it must be only three-pence.

These latter words may be added here, if there has been no former assessment for those purposes.

A. B.
C. D.

No. XVI.

No. XVI. Order of Two Justices for *widening*, or [*diverting and turning*] a Highway. *Vide* stat. 13 G. 3. *c.* 78. § 16. p. 859.

Middlesex. { *WE,* ——, *two of his majesty's justices of the peace for the said county, acting within the hundred, &c. of* ——, *within the said county, having, upon view, found, that a certain part of the highway between* —— *and* ——, *in the parish, &c. of* ——, *in the said hundred, for the length of* —— *yards, or thereabouts, and particularly described in the plan hereunto annexed, is, for the greatest part thereof narrow,* and cannot be conveniently enlarged and made commodious for travellers, without diverting and turning the same; and having viewed a course proposed for the said new highway, through *the lands and grounds of* —— *and* ——, *of the length of* —— *yards, or thereabouts, and of the breadth of* —— *feet, or thereabouts, particularly described in the plan hereunto annexed, which we think will be much more commodious to the public; we do hereby order, that the said highway be* diverted and turned *through the lands aforesaid; and that the surveyor of the highways for the parish, &c. of* ——, *where the said old highway lies, do forthwith proceed to treat and make agreement with the said* —— *and* —— *for the recompence to be made for the said ground, and for the making such ditches and fences as shall be necessary, in such manner, with such approbation, and by pursuing such measures and directions in all respects, as are warranted and prescribed by the statute, made in the thirteenth year of the reign of his majesty king* George *the third,* "For the amendment and preservation of the highways;" *and in case such agreement shall be made as aforesaid, we do order an equal assessment, not exceeding the rate of sixpence in the pound, to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, in the said parish, &c. of* ——, *and that the money arising thereupon be paid and applied in making such recompence and satisfaction as aforesaid, pursuant to the directions of the said act.*

(When it is only to be widened, leave out the words in Roman, and insert) *But may be conveniently enlarged and widened, by adding thereto from* —— or, *widened and enlarged.*

A. B.
C. D.

No. XVII.

No. XVII. Certificate from the said Justices to the Court of Quarter Session. *Vide* stat. 13 G. 3, *c.* 78. § 16. p. 860.

This is to be written upon the above order, when no agreement can be made.

To the justices of the peace, at their general quarter sessions, to be held at —— in the said county, the —— day of ——.

WE, the within named A. B. *and* C. D., *do hereby certify to the said court of quarter sessions, that we made and signed the within order; and that with our approbation, and by our direction, the said surveyor hath treated with the said* —— *and* —— *for the said lands required for the purposes aforesaid, but was not able to make any agreement for that purpose with them, or either of them;*

and that he tendered to the said ——— the sum of ———, and to the said ——— the sum of ———, as a recompence for the said ground, and for the making the said ditches and fences, which they, and each of them, refused to receive.

A. B.
C. D.

No. XVIII. Order for stopping up the Old Highway, and selling the Land and Soil thereof. *Vide* stat. 13 *G.* 3. *c.* 78. § 17. p. 861. — No. XVIII.

WE whose names are subscribed, being the justices of peace who have viewed the several highways described in the plans hereunto annexed, and made an order for diverting the old highway; and being satisfied that the new highway therein described is properly made, and fit for the reception of travellers, do hereby order the said old highway, being of the length of ——— yards, and of the breadth of ——— feet, upon a medium, as appears by the said plan, to be stopped up, and the land and soil thereof to be sold by the said surveyor to ———, whose land adjoins thereto, if he shall be willing to purchase the same, for the full value thereof, if not, to some other person or persons, for the full value thereof: (reserving nevertheless to ——— a free passage for persons, horses, cattle, and carriages, through the land and soil of the said old highway to and from the land, &c. belonging to him, called ———, according to his ancient usage thereof.)

If there are more highways than one to be stopped up, there should be a separate order for each. This to be inserted where necessary, and to be varied as the circumstances of the case may require.

No. XIX. Certificate to be written under the Order above mentioned. *Vide* stat. 13 G. 3. *c.* 78. § 17. p. 861. — No. XIX.

WE the above-named justices do certify, that the old highway, hereinbefore mentioned and described, was sold by the said surveyor to ——— with our approbation, for the sum of ———, which sum we do order the said ——— to pay to the said surveyor, to be applied in purchasing the land, and making the said new highway; and if any surplus remains, we do order, that the same shall be applied for the use of the highways within the said parish, &c. of ———.

No. XX. Receipt for the Purchase-money, to be indorsed upon, or written under, the Certificate above mentioned. *Vide* stat. 13 G. 3. *c.* 78. § 17. *ante*, p. 861. — No. XX.

RECEIVED the ——— day of ———, from the said ———, the sum of ———, being the full consideration money for the purchase of the said old highway hereinbefore described, pursuant to the said orders and certificate.

XXI. No. XXI. Order of Two Justices for diverting and turning a (*public Highway, Bridleway,* or *Footway, as the case shall be,*) through the Lands of any Person who consents thereto. *Vide* stat. 55 G. 3. *c.* 68. § 2. p. 862.

Middlesex. { *WE, ——— and ———, esquires, two of his majesty's justices of the peace for the said county, at a special sessions, held at ———, in the hundred of ———, in the said county, on the ——— day of ——— one thousand eight hundred ———, having, upon view, found, that a certain part of a highway, &c., within the parish, &c. of ———, in the said hundred, lying between ——— and ———, for the length of ——— yards, or thereabouts, and particularly described in the plan hereunto annexed, may be diverted and turned so as to make the same nearer* (*or,* more commodious) *to the public; and having viewed a course, proposed for the new highway, in lieu thereof, through the lands and grounds of ———, of the length of ——— yards, or thereabouts, and of the breadth of ——— feet, or thereabout, particularly described in the plan hereunto annexed, and having received evidence of the consent of the said ——— to the said new highway being made through his lands hereinbefore described, by writing under his hand and seal, we do hereby order, that the said highway be diverted and turned through the lands aforesaid; and we do order an equal assessment,* &c. (in the same form as before mentioned.)

XXII. No. XXII. Consent from the Owners of the Land through which a New Highway is proposed to be made. *Vide* stat. 55 G. 3. *c.* 68. § 2. p. 862.

I A. B. *of ———, in the county of ———, being owner of the lands described in the plan hereunto annexed, through which part of a certain highway, lying between ——— and ——— is intended to be diverted and turned, in consideration of the sum of ———, to be paid to me for the said land, and the soil thereof;* or, *in consideration of the said old highway being sold, exchanged, and to be vested in me, and also of the sum of ———, to be paid to me,* [as the case may be,] *do hereby consent to the making and continuing such new highway through my said lands. Given under my hand and seal, this ——— day of ———.*

No. XXIII. Licence from Justices of Peace, at a Special Sessions, to get Materials for the Repair of the Highways in another Parish, besides that wherein such Materials are to be employed. *Vide* stat. 13 G. 3. *c.* 78. § 27. p. 845. No. XXIII.

Middlesex. { At a special sessions, held at ———, for the hundred of ———, in the said county, by justices of the peace for the said county acting with in the said hundred, on the ——— day of ———, 18—.

IT appearing to us, upon evidence, this day received, that sufficient materials cannot conveniently be had within the waste lands, common grounds, rivers, or brooks, nor in the inclosed lands or grounds lying within the parish, &c. of ———, in the said hundred, for the repair of the highways within the said parish, &c., nor in the waste lands, common grounds, rivers, or brooks, within the parish of ———, adjoining to the said parish, &c. of ———, we do hereby give our licence to the surveyor for the said parish of ———, to search for, dig, get, and carry sand, gravel, chalk, stone, and other materials, within the inclosed lands or grounds of C. D. *within the said parish, &c. of ———, to be employed in the repair of the highways within the said parish of ———, it appearing from evidence laid before us, that there are proper materials within the said lands for the purposes aforesaid, lying convenient to the said highways; and that after such materials shall be so taken, there will be sufficient left for the use of the highways within the said parish of ———, upon the said surveyors making satisfaction and recompence for the same, in the manner directed by the act passed in the thirteenth year of the reign of his majesty king* George *the* third, "For the amendment and preservation of the highways," *subject to such restrictions as are therein contained. Given under our hands and seals, the day and year above written.*

A. B.
C. D.

No. XXIII a. Surveyor's Application to a Justice of Peace for his Licence to take Stones for repairing the Highways from Lands being private Property, on Affidavit that the same are necessary for Repair of the Highways, and that the Occupier, on Request, had refused Permission. (*a*) *Vide ante*, stat. 13 G. 3. *c.* 78. § 29. *ante*, p. 846. No. XXIII. a.

Middlesex. { *BE it remembered, that on the ——— day of ———, at ———, in the said county,* A. S., *surveyor of the highways within the parish of ———, in the said county, in his proper person, cometh before me,* J. P. *esq., one of his majesty's justices of the peace in and for the said county, and maketh complaint on oath, that he hath applied to* A. O. *of ———, for*

(*a*) This form is not given in the schedule to stat. 13 G. 3. c. 78.

his consent to gather stones from the lands called ———, being the freehold of him the said A. O., *and now in his actual occupation within the said parish of* ———, *and county of* Middlesex, *for the purpose of repairing and amending the highways within the said parish; and further upon his oath the said* A. S. *giveth me, the said justice, to understand and be informed, that the said stones are necessary materials for the repair of the said highways, and that proper materials cannot otherwise be procured, and that the said* A. O. *hath refused to permit the same to be gathered; wherefore the said* A. S. *prayeth the consideration and order of me, the said justice, in the premises, according to the form of the statute in such case made and provided.*

A. S.

Exhibited before me on the oath of the said A. S., *the day and year first above written.*

J. P.

No. XXIV.

No. XXIV. Licence from a Justice of Peace, for a Surveyor to gather Stones upon inclosed Lands, for the Repair of the Highways. *Vide ante*, stat. 13 *G.* 3. *c.* 78. § 27. p. 845.

Middlesex. } To the surveyor of the highways for the parish of ———, in the hundred of ———, in the said county.

WHEREAS by an act, passed in the thirteenth year of the reign of his majesty king George *the third,* "For the amendment and preservation of the highways," *the surveyors are authorized to gather stones lying upon any lands or grounds within their liberty, for the use and benefit of the highways, but not without the consent of the occupiers of such lands, or a licence from a justice of peace for that purpose: and whereas it appears to me* E. F., *one of his majesty's justices of the peace for the said county, and acting within the said hundred, &c., upon the oath of the said surveyor, that he hath applied to* A. B. *of* ———, *for his consent to gather stones from the lands, called or known by the names of* ——— *and* ——— *in his occupation, within the said parish, &c., for the purposes aforesaid, and that the said stones are necessary for the repair of the said highways, and that the said* A. B. *hath refused to permit the same to be gathered; and the said* A. B. *having been duly summoned to appear before me, to show cause why such permission should not be granted, and* [having appeared before me accordingly]; *or,* [having sent his steward or agent]; *or,* [*C. D.* on his behalf, to attend me upon that occasion]; *or,* [but not having appeared] *I have heard what has been alleged, and taken the said matter into consideration, and am of opinion, that the said stones are necessary, and ought to be gathered and carried away for the purposes aforesaid; therefore I do hereby give my licence to the said surveyor to take and carry away the same accordingly. Given under my hand and seal, the* ——— *day of* ———, 18—.

No. XXV. Notice to perform Statute-duty (to be given four Days before the Day on which the Duty is to be performed). *Vide* stat. 13 *G.* 3. *c.* 78. § 37. *ante*, p. 843. No. XXV.

A. B. *you are hereby required to send a team, with two able men, to* ———, *within the parish, &c. of* ———, *on the* ——— *and* ——— *days of* ——— *next, at* ——— *o'clock in the morning of each day, in order to perform such duty upon the highways within the said* ———, *as shall be required by the surveyor, pursuant to the direction of the act, passed in the thirteenth year of the reign of his majesty king* George *the third,* "For the amendment and preservation of the highways." [When personal labour is required, *You are hereby required, by yourself, or a sufficient labourer, to attend, &c.*] *Dated this* ——— *day of* ———, 18—.

If he does not occupy lands, &c. of the yearly value of 30*l.* in such parish, &c. he is only to send one man. • If a waggon, or a cart with two horses, or one horse only is required, let it be expressed

No. XXVI. Notice for Compositions. *Vide* stat. 13 *G.* 3. *c.* 78. § 41. *ante*, p. 841. No. XXVI.

NOTICE is hereby given, that all persons who are inclined to compound for their statute-duty within the parish, &c. of ———, *are hereby required to signify their intention to compound for the same to* ———, *the surveyor of the highways for the said parish, &c. at the house of* ———, *of* ———, *on the* ——— *day of this inst.* November, *between the hours of* ——— *and* ———, *and they are hereby required, at the same time, or within the space of one month after, to pay their composition-money to the said surveyor; and also, that all persons who are liable to pay money for the lands, tenements, woods, tithes, and hereditaments, which they occupy, or, in lieu of their duty within the said parish, &c. according to the act made in the thirteenth year of his majesty king* George *the third,* "For the amendment and preservation of the highways," *are required to pay the same to the said surveyor, on the day or within the time aforesaid. Dated this* ——— *day of* November, 18—.

A. B. *Surveyor.*

No. XXVII. Order for Statute-duty to be performed in Kind. *Vide* stat. 34 *G.* 3. *c.* 74. § 6. p. 839. No. XXVII

Middlesex. } At a special sessions held at ———, in the hundred of ———, in the said county, the ——— day of ———, by justices of the peace for the said county, acting within the said hundred.

IT appearing to us, from the information which we have received, that there will be difficulty in procuring the necessary carriages, [or, *a sufficient number of labourers,* as the case shall be,] *for the repair of the highways within the parish, &c. of* ———, *within the said hundred, without paying high and extravagant prices for the same, we do hereby order and direct the team-duty within the said parish, &c. except such teams where the owners thereof do not occupy lands, tenements, woods, tithes, or hereditaments, within the said parish, &c. of the annual value of thirty pounds, or one half of the*

team-duty, &c, or the labourers in lieu of their duty within the said parish, &c. according to the act made in the thirteenth year of his majesty king George *the third,* "For the amendment and preservation of the highways," *are required to pay the same to the said surveyor, on the day, or within the time aforesaid. Dated this* ——— *day of* November, 18—.

No. XXVIII. No. XXVIII. Notice to the Surveyor of the Times fixed by the Inhabitants for being excused from doing their Statute-duty. *Vide* stat. 13 G. 3. *c.* 78. § 43. p. 843.

To the surveyor of the highways for the parish, &c. of ——, in the county of ———.

I A.B., *constable, [headborough, tithingman, of the said parish, &c.] do hereby give you notice, that the inhabitants of the said parish &c. did, at a vestry or public meeting, held on the* ——— *day of* ———, *one thousand eight hundred and* ———, *agree to take the benefit of the indulgence of three months, for not performing their statute-duty given by the legislature, in the act passed in the thirteenth year of the reign of his majesty king* George *the third,* "For the amendment and preservation of the highways," *at the times following;* videlicet, *that they shall not be called upon to perform such duty between the* ——— *day of* ——— *and the* ——— *day of* ———, *(which they consider as the seed month,) nor between the* ——— *day of* ——— *and the* ——— *day of* ———, *(which they consider as the hay-harvest month,) nor between the* ——— *day of* ——— *and the* ——— *day of* ——— *(which they consider as the corn-harvest month).* [The like notice to be given to the surveyor or surveyors of the turnpike roads, where there are any such within the parish, &c.]

No. XXIX. No. XXIX. Order of the Justices at their Special Sessions, for the Repair of certain Highways which most want Repair. *Vide* 13 G. 3. *c.* 78. § 25. p. 843.

Middlesex. { At a special sessions, held at ———, in the hundred of ———, in the said county, the ——— day of ———, by justices of the peace for the said county acting within the said hundred.

To the surveyors of the highways for the parish, &c. of ———, in the said hundred.

IT *appearing to us that the highway lying between* ——— *and* ———, *within your liberty, is very founderous, and in bad repair, and being of great public use, we do hereby order, that you repair, or cause the same to be repaired, before the* ——— *day of* ——— *next. Given under our hands and seals, this* ——— *day of* ———.

No. XXX. A Precept for erecting Guide Posts, &c. *Vide* 13 G. 3. c. 78. § 26. p. 855. No. XXX.

Middlesex. { At a special sessions, held at ——, for the hundred of ——, in the said county, before justices of the peace for the said county, acting within the said hundred, on the —— day of ——.

To the surveyor of the parish of ——, in the said hundred.

YOU are hereby required forthwith to erect, or cause to be erected, in the most convenient place upon the highway lying between —— and ——, within your liberty, where the roads cross or branch out, a guide-post, with proper inscriptions painted on both sides thereof, in large legible letters, denoting the towns of —— and —— [or other places, as the justices shall think most proper].

[Where graduated stones or posts are necessary to prevent accidents from deep waters, vary it as under.] *In the most convenient place upon the highway, at the approach or entrance on each side of the ford or water called —— at ——, within your liberty, graduated posts, denoting the depth of water in the deepest part thereof, through which such highway passes; and you are allowed to charge the reasonable expences of providing and erecting the same in your accounts.*

A. B.
C. D.

No. XXXI. Notice for holding a Vestry, or other public Meeting. *Vide* stat. 13 G. 3. c. 78. § 66. *ante*, p. 878. No. XXXI.

NOTICE is hereby given, that a vestry, or public meeting, will be held at ——, on the —— day of —— next, at the hour of —— in the —— noon, in order to consult about the times when it will be most convenient for the inhabitants of this parish, &c. to be excused from being called forth to perform their statute-duty, according to the indulgence given them by the act, passed in the thirteenth year of the reign of his majesty king George *the third*, "For the amendment and preservation of the highways." *Dated the —— day of ——.*

A. B. *constable*, [*headborough, &c.*]

No. XXXII. Presentment by a Justice of Peace. (*a*) *Vide* stat. 13. G. 3. c. 78. § 24. p. 879. No. XXXII.

(*a*) This form of presentment is confined to cases of non-repair. *Rex* v. *Winter*, 13 *East*, 258. Vide *ante*, § xvi, p. 875.

Middlesex. { *AT the general quarter sessions of the peace of our lord the king, held for the said county, at ——, in the said county, on —— the —— day of ——, in the —— year of the reign of ——, before —— esquires, and others, their companions, justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine*

divers felonies, trespasses, and other misdemeanours in the said county committed; A. B. *esquire, one of the justices of our said lord the king, assigned for the purposes aforesaid, by virtue of an act, made in the thirteenth year of the reign of his majesty king* George *the third,* "For the amendment and preservation of the highways," *upon his own view,* [or, *upon information, upon oath, to him given by* C. D., *surveyor of the highways for the parish, &c. of* ———, *in the said county,*] *doth present, that from the time whereof the memory of man is not to the contrary, there was, and yet is, a certain common and ancient king's highway, leading from the town of* ———, *in the said county,* &c. *towards and unto* ———, *within the same county, used for all the king's subjects, with their horses, coaches, carts, and carriages, to go, return, and pass at their will; and that a certain part of the same king's common highway, commonly called* ———, *situate, lying, and being in the parish, &c. of* ———, *in the same county, containing in length* ——— *yards, and in breadth* ——— *feet, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *and continually afterwards, until the present day, was, and yet is, very ruinous, deep, broken, and in great decay, for want of due reparation and amendment, so that the subjects of the king, through the same way, with their horses, coaches, carts, and carriages, could not, during the time aforesaid, nor yet can go, return, or pass, as they ought and were wont to do, to the great damage and common nuisance of all the king's subjects through the same highway, going, returning, or passing, and against the peace of our said lord the king, and that the inhabitants of the parish, &c. of* ——— *aforesaid, in the county aforesaid, the said common highway (so in decay) ought to repair and amend, when and so often as it shall be necessary. In testimony whereof, the said* A. B. *to these presents hath set his hand and seal, this* ——— *day of* ———, *in the year aforesaid.*

This to be inserted where it is upon the information of the surveyor.

No. XXXIII.

No. XXXIII. Summons for any Person or Persons to attend a Justice or Justices. *Vide* p. 883.

Middlesex. To A. B. of ———.

WHEREAS complaint and information hath been made upon oath before me C. D., *one of his majesty's justices of the peace for the said county &c., by* E. F. *of* ———, *that, &c.* [here state the nature and circumstances of the case, as far as it shall be necessary to show the offence, and to bring it within the authority of the justice, and in doing that, follow the words of the act as near as may be.] *These are therefore to require you personally to appear before me,* [or, *the justices to be assembled at their special sessions to be holden*] *at* ———, *in the said county, &c. on the* ——— *day of* ——— *next, at the hour of* ——— *in the* ——— *noon, to answer to the said complaint and information, made by the said* E. F., *who is likewise directed to be then and there present, to make good the same. Herein fail not. Given under my hand and seal, this* ——— *day of* ———.

No. XXXIV. Information. *Vide* p. 883. No. XXXIV.

Middlesex. *BE it remembered, that on the ——— day of ———,* A. B. *of* ———, *in the said county, informeth and maketh oath before me* ———, *one of his majesty's justices of the peace for the said county, that* ——— *of* ———, *in the said county,* [here describe the offence, and if it is for default in performing statute-duty, state the duty required, and the notice given for that purpose, and the neglect according to the fact, and as near the words of the act as may be,] *contrary to the statute made in the thirteenth year of the reign of his majesty king* George *the third,* " For the amendment and preservation of the highways," *which hath imposed a forfeiture of* ——— *for the said offence.* A. B.

Taken and sworn, the ——— *day of* ———, *before me,*

No. XXXV. Form of a Conviction. *Vide* p. 883. No XXXV.

Middlesex. *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at* ———, *in the county aforesaid,* A. B. *came before me* C. D. *esquire, one of his majesty's justices of the peace for the said county, and informed me that* E. F. *of* ———, *on the* ——— *day of* ——— *now last past, at* ———, *in the said county, did* [here set forth the fact in the manner described by the statute], *whereupon the said* E. F., *after being duly summoned to answer the said charge, appeared before me,* ———, *on the* ——— *day of* ———, *at* ———, *in the said county, and having heard the charge contained in the said information, declared, that he was not guilty of the said offence; but the same being fully proved upon the oath of* G. H., *a credible witness, it manifestly appears to me, the said justice, that he the said* E. F. *is guilty of the offence charged upon him in the said information: it is therefore considered and adjudged by me, the said justice, that the said* E. F. *be convicted, and I do hereby convict him of the offence aforesaid; and I do hereby declare and adjudge, that he the said* E. F. *hath forfeited the sum of* ———, *of lawful money of* Great Britain, *for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given, &c.*

After the words, "*being duly summoned to answer to the said charge,*" insert, *did not appear before me, pursuant to the said summons:* [or, *did neglect and refuse to make any defence against the said charge; but the same being fully proved, &c.* as before.] This to be inserted where the party refuses to appear upon the summons.

After the words, "*contained in the said information,*" insert, *acknowledged and voluntarily confessed the same to be true, and it manifestly appears to me the said justice, &c.* as above. This to be inserted when the party accused confesses the charge.

No. XXXV. a.

No. XXXV. a. Order for Payment of a Forfeiture. (*a.*)

Vide p. 883.

Middlesex. { To *A. O.* of ———, in the county of ———, labourer.

WHEREAS you the said A. O. *are duly convicted before me,* J. P. *esq., one of his majesty's justices of the peace for the said county, for that you the said* A. O. [here describe the offence as set forth in the information], *whereby you have forfeited the sum of ———: I do therefore hereby order you the said* A. O. *forthwith* [or, *within such time as the act directs*], *to pay to* A. S., *surveyor of the ——— of ———, in the said county, the said sum of ———, to be by him disposed of as the law directs. Given under my hand and seal, the ——— day of ———, one thousand eight hundred and ———.*

No. XXXVI. (*a*) Not to be issued till after six days from service of the order for payment.

No. XXXVI. Warrant to distrain for the Forfeiture. (*a*)

Vide stat. 13 G. 3. *c.* 78. § 7. p. 849, 850.

Middlesex. { To the constable, headborough, or tithingman, of ———.

WHEREAS A. B. *of ———, in the said county, yeoman, is this day convicted before me,* C. D. *esq., one of his majesty's justices of the peace in and for the said county, upon the oath of* G. H., *a credible witness, for that the said* A. B. *hath* [here set forth the offence, describing it particularly in the words of the statute, as near as may be,] *contrary to the statute in that case made and provided, by reason whereof, the said* A. B. *hath forfeited the sum of ———, to be distributed as herein is mentioned, which he hath refused to pay: these are therefore, in his majesty's name, to command you to levy the said sum of ———, by distress of the goods and chattels of him the said* A.B.; *and if within the space of four days next after such distress by you taken, the said sum, together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of ——— to* E. F. *of ———, who informed me of the said offence, and the other half of the said sum of ——— to* J. K., *the surveyor of the highways, for the parish, township, or place where the said offence, neglect, or default happened, to be employed towards the repair of the said highways, returning the overplus, upon demand, to him the said* A. B. (*the reasonable charges of taking, keeping, and selling the said distress being first deducted*); *and if sufficient distress cannot be found of the goods and chattels of the said* A. B. *whereon to levy the said sum of ———, that then you certify the same to me, together with this warrant. Given under my hand and seal, the ——— day of ———.*

This to be varied according to the act, in each particular case.

C. D.

(*a*) This form is not given in the schedule to stat. 15 G. 3. c. 78.

No. XXXVII. Return of the Constable to be made upon the Warrant of Distress, when there are no Effects. *Vide ante*, p. 883. No. XXXVII.

I A. B., *constable of the parish, &c. of* ——, *in the county of* ——, *do hereby certify and make oath, that, by virtue of this warrant, I have made diligent search for the goods of the within named* ——, *and that I can find no sufficient goods whereon to levy the within sum of* ——. *As witness my hand, the* —— *day of* ——. A. B.

Sworn before me the day and year, &c. C. D.

No. XXXVII. a. Summons for Non-payment of Assessment. *Vide* p. 881. No. XXXVII. a.

To A. O. of the —— of ——, in the county of Stafford.

County of ——, to wit. *WHEREAS complaint and information have been made upon oath before me, one of his majesty's justices of the peace for the said county, by the surveyor of the highways for the said* ——, *that by a rate or assessment duly made, allowed, and published, according to the statutes in that case made and provided, the sum of* —— *was duly rated and assessed upon you, for and towards the amending, repairing, and supporting the highways within the said* ——, *and that you the said* A. O. *have refused and neglected to pay the same within ten days after demand thereof made, and have not yet paid the same. These are, therefore, to require you personally to appear before me (or such other of his majesty's justices of the peace as shall be present) at* ——, *in the said county, on* —— *the* —— *day of* ——, *at the hour of* —— *in the* —— *noon, there to answer to the said complaint and information, and to show cause why the said sum should not be levied on your goods and chattels pursuant to the said statute. Herein fail not. Given under my hand and seal, this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and* ——.

No. XXXVIII. Warrant of Distress for Non-payment of Money charged by an Assessment. *Vide* p. 881. No. XXXVIII.

Middlesex. To the constable, headborough, tithingman, of ——, in the said county.

WHEREAS, by an assessment made upon the occupiers of lands, tenements, woods, tithes, and hereditaments within the parish, &c. of ——, *in the said county, for the purposes of, &c.* [as stated in the justice's order,] *pursuant to an order of justices for that purpose, according to the directions of the act, passed in the thirteenth year*

(a) This form is not given in the schedule to stat. 13 G. 3. c. 78.

of the reign of his majesty king George *the third,* "For the amendment and preservation of the highways," A. B. *was charged the sum of* ——, *as his share and proportion of the said assessment, in respect of the lands, tenements, woods, tithes, and hereditaments, which he occupied within the said parish, &c.: and whereas it appears to me, upon the oath of* ——, *that the said sum of* —— *hath been duly demanded from the said* A. B., *and that he hath refused to pay the same for the space of ten days after such demand made, these are therefore, in his majesty's name, to command you to levy the said sum of* ——, *by distress of the goods and chattels of the said* A. B., *and if the same shall not be paid within the space of four days next after such distress by you taken, together with the reasonable charges of taking and keeping the same, that you do then sell the said goods and chattels so by you distrained; and out of the money arising by such sale, that you do pay unto* C. D., *the surveyor of the highways for the said parish, &c. of* ——, *the said sum of* ——, *to be employed for the purposes aforesaid; and that you do return the surplus thereof to the said* A. B., *the reasonable charges of taking, keeping, and selling the said distress, being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said* A. B. *whereon to levy the said sum of* ——, *that then you certify the same to me, together with this warrant. Given under my hand and seal, the* —— *day of* ——.

No. XXXIX.

No. XXXIX. Commitment for Want of Distress. *Vide ante,* p. 881. 883.

Middlesex. { To the constable of ——, in the said county, and to the keeper of the common gaol, [or, the house of correction] at ——, in the said county.

WHEREAS A. B. *of* ——, *in the said county, yeoman, was, on the* —— *day of* ——, *convicted before me,* C. D. *esq., one of his majesty's justices of the peace in and for the said county, upon the oath of* E. F., *a credible witness, for that he, the said* A. B. [here set forth the offence], *contrary to the statute made in the thirteenth year of the reign of his majesty king* George *the third,* " For the amendment and preservation of the highways," *by reason whereof the said* A. B. *hath forfeited the sum of* ——: *and whereas, on the* —— *day of* ——, *in the year aforesaid, I did issue my warrant to the constable of* —— *to levy the said sum of* ——, *by distress and sale of the goods and chattels of him the said* A. B., *and to distribute the same according to the directions of the said statute: and whereas it duly appears to me, upon the oath of the said constable, that the said constable hath used his best endeavours to levy the said sum on the goods and chattels of the said* A. B. *as aforesaid, but that no sufficient distress can be had whereon to levy the same, these are therefore to command you the said constable of* —— *aforesaid to apprehend the said* A. B., *and him safely to convey to the common gaol* [or, *house of correction*] *at* ——, *in the said county, and there deliver him to the keeper thereof together with this precept; and I do hereby also command you, the said keeper, to receive and keep in your custody the said* A. B. *for*

the space of three months, unless the said sum shall be sooner paid, pursuant to the said conviction and warrant; and for so doing this shall be your sufficient warrant. Given under my hand and seal, the ——— *day of* ———, *in the year of our lord* ———. C. D.

In the case of a commitment for the want of payment of money due by an assessment, it must be, *to receive, and keep in your custody, until he shall have paid the said sum of* ———, *and the further sum of* ———, *being the costs and charges occasioned by his neglect in paying the same.*

No XL. Notice of Appeal to the Quarter Sessions. *Vide ante*, p. 885. No. XL.

A. B. *take notice, that I intend to appeal to the next general quarter sessions of the peace, to be holden for the county, &c. of* ———, *against an order,* [*conviction, or other proceeding,* as the case may be, particularly specifying the purport of such order, &c. and assigning the grievance, and cause of complaint].
Dated the ——— *day of* ———. C. D.

The following three forms, from No. XLI. to XLIII., are copied from stat. 34 *G.* 3. *c.* 64.

No. XLI. Information. *Vide* stat. 34 *G.* 3. *c.* 64. § 1. p. 822. No. XL.

County of ——— } *AT a petty session, holden before* J. P. *and* K. P., *two of his majesty's justices of the peace for the said county, this* ——— *day of* ———, J. S., *one of the surveyors of the highways of the parish of* A., *came before the justices aforesaid, and gave them to be informed, that there is in the said county a certain common highway, leading from* M. *to* N.; *and that there is a certain part of the said highway, that is to say, so much thereof as lies between a certain place called* C. *and a certain other place called* D., *being in length* ——— [as the case may be], *one side of which last-mentioned part of the said highway adjoining to the parish of* A., *lies within the said parish of* A., *and is to be, and of right ought to be, repaired by the said parish of* A.; *and that the other side of the same part of the said highway, adjoining to the parish of* B., *lies within the parish of* B., *and is to be, and of right ought to be, repaired by the said parish of* B.; *and stating that the repair of such part of the said highway is very inconvenient to the parishes aforesaid, and the want thereof detrimental to the public; and therefore praying, that such part of the said highway may be allotted and apportioned for the repair thereof, by the justices aforesaid, to the said several parishes of* A. *and* B. *in the manner directed by an act passed in the thirty-fourth year of the reign of king* George *the third, intituled,* An act, &c. See Plan.

(*Signed*) J. S.,
One of the surveyors of the highways for the parish of A.

The above application was made to us the day and year first above written. J. P.
K. P.

No. XLII. XLII. Summons, to be subjoined to a Copy of the above Information. *Vide* p. 822.

County of ——— { To the surveyors of the highways of the parish of *B.*, in the said county, any or either of them.

WHEREAS a certain information has been given to us, J. P. *and* K. P., *two of his majesty's justices of the peace for the said county, by* J. S., *one of the surveyors of the highways of the parish of* A., *in the said county, a true copy whereof is above written: these are, in his majesty's name, to summon you, any or either of you, to appear before us at* ———, *in the said county, on the* ——— *day of* ———, *at* ———, *to show cause (if any) why an allotment and apportiontment of the highway therein mentioned should not be made, according to the provisions of the act referred to in the said information. Hereof fail not. Given under our hands, this* ——— *day of* ———.

J. P.
K. P.

No. XLIII. No. XLIII. Final Order and Adjudication, to be filed with the Clerk of the Peace. *Vide* stat. 34 *G.* 3. *c.* 64. § 1. p. 823.

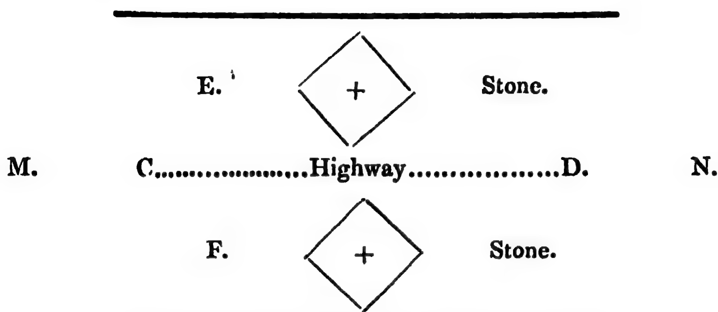
WHEREAS, &c. [here state the original application; the summons; the appearance; and that the parties were heard, or their non-appearance.] *Now, we the justices aforesaid, having fully heard and understood the premises, do declare, adjudge, and order, that the said highway shall be divided in the following manner; (that is to say,) that at the distance of* ———, *measuring from the place called* C. *there shall be erected certain posts or stones,* E. *and* F., *on each of the side said highway; and the whole of the said highway, from the place called* C. *to such posts or stones, shall be from time to time, and at all times hereafter, repaired by the parish of* A.; *and the whole of the said highway from such posts or stones to the place called* D. *shall from time to time, and at all times hereafter, be repaired by the parish of* B. *In witness whereof, we have hereunto set our hands and seals, this* ——— *day of* ———.

J. P. (L. S.)
K. P. (L. S.)

PLAN.

Parish of A.

Bound to repair on this side to the dotted line.



Parish of B.

Bound to repair on this side to the dotted line.

No. XLIV. Form of Precept to the High Constable for appointing a Special Sessions for Surveyors to make Returns as to the State of the Highways. Of Persons who have neglected to cut and prune their Hedges, Trees, &c. &c. *Vide ante*, 13 G. 3. *c.* 78. § 7. p. 849. and § 61. p. 814. No. XLIV.

County of ——— } To J. W. ——— high constable of the hundred of ——— in the said county of ———.

WE, two of his majesty's justices of the peace for the said county, (one whereof is of the quorum,) do hereby require you, immediately upon the receipt hereof, to issue your warrants to all the petty constables within your said hundred, in the form hereon indorsed. Given under our hands and seals, the —— day of ———, in the year of our Lord one thousand eight hundred and ———.

(L. S.)
(L. S.)

No. XLV. High Constable's Precept for a Special Sessions for Surveyors to make Return as to the State of the Highways, of Persons who have neglected, &c. *Vide ante*, p. 814. 849. No. XLV.

County of ——— Hundred of ——— } To the constable of the parish of ———.

BY virtue of a precept from two of his majesty's justices of the peace for the county of ———, acting within the said hundred, to me directed, you are hereby required to give notice to the surveyors of the highways within your said parish, that they are

personally to appear before the said justices, at a special sessions to be held for the said hundred of ———, *for executing the purposes of the acts relating to the highways, on* ——— *the* ——— *day of* ——— *next, at the hour of* ——— *in the forenoon of the same day, at* ———, *in the said county, then and there to make returns in writing of the state of all the roads, common highways, bridges, causeways, pavements, hedges, ditches, and watercourses appertaining to, and of all nuisances, and encroachments made upon, the several highways within their respective parishes, and of which they are surveyors, and also of all persons who have neglected, or shall neglect in your said constable-wick to cut, prune, and plash their hedges, to cut, prune, or lop the trees growing in or near such hedges and fences as adjoin the highways, and to open, cleanse, and scour the ditches and watercourses; and also at the same time to be examined as to the written notices by them given for these purposes, as well as to what they may have done in their office, in giving notice in the church of the time and place for compounding for statute labour on the highways, and otherwise for carrying of the highway acts into execution. You will further inform the said surveyors of the highways that they may then have an order of two magistrates to enable them to receive a composition in money, instead of performance of statute-duty in kind. You will moreover inform all those justices of the peace, who reside in your parish, of the time and place appointed for the said sessions. And be you then there to make due return hereof. Given under my hand, at* ——— *in the said county, the* ——— *day of* ———, *one thousand eight hundred and* ———.

J. W.
High Constable.

No. XLVI.

No. XLVI. Surveyor's Return of the State of the Highways. *Vide* stat. 13 *G.* 3. *c.* 78. § 12. p. 851.

——— } to wit. } WE, A, B. *and* C. D., *surveyors of the highways for the parish of* ———, *do hereby certify, that we have, in pursuance of a warrant to us directed, taken a view of all the roads, highways, &c. within our said parish, and that the same are in good repair, that his majesty's subjects may pass and repass without danger; and that there are no nuisances or encroachments thereon.*

Sworn the ——— *day of* ———, *before us,*

J. C.
S. P.

No. XLVII. Order for Occupiers of Land to make Hedges, and cut down Trees. *Vide* stat. 13 G. 3. *c.* 78. § 7. p. 849. No. XLVII.

At a special sessions held at ——— in the hundred of ———, in the county of——— on ———, the——— day of———, in the year of our Lord ———, by justices of the peace for the said county, acting within the said hundred.

——— to wit. } *WHEREAS complaint hath been made unto us by* A. S., *surveyor of the highways of the parish of* ———, *that* A. O. *of the said parish hath had due notice from him to cut, prune, and plash his hedges adjoining, and to cut down or to prune and lop the trees growing in and near such hedges, in such manner that the highways may not be prejudiced by the shade thereof, and that the sun and wind might not be excluded therefrom to the damage thereof (pursuant to the statute made in the thirteenth year of the reign of his majesty king* George *the third), but that he hath not complied with such notice, or with the requisites of the said act.*

And whereas the said A.O., *having been duly summoned to answer the said complaint, hath made default in his appearance. Now we, upon duly considering the circumstances of the case, do order, that such hedges be cut, plashed, and pruned, so as not to exceed the height of ——— from the surface of the field, and that all such trees as grow in and near such hedges, in the grounds occupied by the said* A. O. *near the said highway, be cut down, or be pruned and lopt, so that the sun and wind may not be excluded from such highway; and we do further order, that in case the said* A. O. *shall not obey this order within ten days from the date hereof, that then* A. S. *the said surveyor do cut, prune, and plash such hedges, and cut down or prune and lop such trees, in manner directed by this order, and proceed against the said* A. O. *immediately afterwards for recovery of the penalties and charges he will thereby incur. Given under our hands and seals, the day and year first above written.*

No. XLVIII. Information of Surveyor of Highways against a Person for not pruning Hedges, &c. *Vide* stat. 13 G. 3. *c.* 78. § 7. p. 849. No. XLVIII.

County of ——— } *BE it remembered, that on the ——— day of ———, one thousand eight hundred and ———, the undersigned surveyor of the highways of the parish of ———, in the said county, informeth and maketh oath before me, one* [See 3 G. 4. c. 23. § 2. *tit.* Conviction, Vol. I.] *of his majesty's justices of the peace in and for the said county of ———, that* A. O. *of ———, in the said county, yeoman, having had due notice to cut, prune, and plash his hedges, cut, prune, or lop the trees, and open, cleanse, and scour his ditches and watercourses, within or adjoining to the public highways in the said first above-named parish, as well as to remove the soil or earth dug out thereof, hath neglected to do the same within the time limited by law and required by such notice, contrary to the statute made in the thirteenth year of the reign of his majesty king* George *the third,* "For the amend-

ment and preservation of the highways," *which hath imposed a forfeiture of* ten shillings *for the said offence.*

Taken and sworn the day and year above written, before me, J. P. — S. H. *Surveyor of the Highways.*

No. XLIX.

No. XLIX. Summons of an Offender for not pruning Hedges, &c. *Vide* stat. 13 G. 3. *c.* 78. § 7. p. 849.

County of ——— } To all constables, tithingmen, and others his majesty's officers of the peace whom these may concern.

WHEREAS complaint and information have been made upon oath before me, one of his majesty's justices of the peace in and for the said county of ———, *by the surveyor of the highways of the parish of* ———, *in the said county, that* A. O. *of* ———, *in the county aforesaid, yeoman, having had due notice to cut, prune, and plash his hedges, cut, prune, or lop the trees, and open, cleanse, and scour his ditches and watercourses, within or adjoining to the public highways in the said first above-named parish, as well as to remove the soil or earth dug out thereof, hath neglected to do the same within the time limited by law and required by such notice, contrary to the statute made in the thirteenth year of the reign of his majesty king* George *the third,* "For the amendment and preservation of the highways," *which hath imposed a forfeiture of ten shillings for the said offence. These are therefore to require you, in his majesty's name, to summon the said offender to appear before me, and such others of his majesty's justices of the peace for the said county of* ———, *as shall be present at the* ———, *in* ———, *in the said county, on* ———, *the* ——— *day of* ——— *instant, at the hour of* ——— *in the forenoon, to answer to the said complaint and information. Herein fail not, as also to make due return hereof at your peril. Given under my hand, this* ——— *day of* ———, *one thousand eight hundred and* ———.

No. L.

No. L. Warrant of Distress for not scouring Ditches, &c. *Vide* stat. 13 G. 3. *c.* 78. § 8. p. 850.

To the constable of the parish of ———, in the county of ———.

——— to wit. } *FORASMUCH as* A. O. *of the parish of* ———, *in the said county of* ———, *is convicted before me* Sir G. C. *bart, one of his majesty's justices of the peace in and for the said county; for that he the said* A. O. *(being the occupier of lands next adjoining to the common highway in the said parish of* ———, *and liable to cleanse, open, and scour the ditch and drain lying between the said common highway and the lands so occupied by him the said* A. O. *as aforesaid, in order to drain and keep dry the said common highway next unto such ditch as often as occasion should be, and having had due and legal notice from the surveyors of the said parish to open, cleanse, and scour the said ditch or drain so adjoining to the said highway as aforesaid,) hath for the space of ten days after*

such notice, neglected, refused, and made default in opening, cleansing, and scouring the said ditch or drain adjoining to the said highway in the said parish of ———, whereby he hath forfeited the sum of ten shillings. These are, therefore, in his said majesty's name, to command you to levy the said sum of ten shillings by distress of the goods of him the said A. O.; *and if within the space of five days next after such distress by you taken, the said sum of ten shillings, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, and, out of the money arising by such sale, that you do pay the said sum of ten shillings to him the said surveyor, to be employed in such manner as the statute in that case directs, returning to him the said* A. O. *the overplus upon demand. Given under my hand and seal this ——— day of ———, in the year of our Lord ———.*

G. C. (*L. S.*)

No. LI. Information of a Surveyor of Highways, for the purpose of obtaining an Order for a Composition instead of Statute Duty in kind, pursuant to stat. 54 G. 3. *c.* 109. § 4. *Vide ante*, p. 833. No. LI.

County of ——— } *BE it remembered, that on the ——— day of ———, in the year of our Lord ———, at a special sessions, held at ———, in the hundred of ———, in the said county, by justices of the peace for the said county, acting within the said hundred: ———, surveyor of the highways within the parish of ———, in the said hundred of ——— and county aforesaid, maketh oath, that the maintenance and repairs of the highways, lying within the said parish, can be more effectually carried on by a composition in money, than by a performance of the statute duty, from the several persons who are bound by law to perform statute duty on the highways within the said parish: Wherefore the said surveyor prayeth the consideration and order of us the said justices, in the premises, according to the form of the statute in such case made and provided.*

Exhibited before us, on oath, the day and year above written. } { *Surveyor of the highways.*

No. LII. Order of two Justices to enable Surveyors to receive a Composition in Money instead of Performance of Statute Duty in Kind, pursuant to Stat. 54 G. 3. *c.* 109. § 4. *Ante*, p. 833. No. LII.

County of ——— { At a special sessions, held at ———, in the hundred of ———, in the said county, the ——— day of ———, in the year ———, by justices of the peace for the said county, acting within the said hundred.

WHEREAS it hath been made appear unto us J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, acting within the said hundred, upon the oath of* A. S. *sur-*

veyor of the highways [or, *turnpike-road or roads*, as the case may be,] *within the parish* [or, *township*] *of* ———, *within the said hundred and county, that the maintenance and repairs of the said highways,* [or, *turnpike road or roads*] *lying within the said parish,* [or, *township*] *can be more effectually carried on by a composition in money than by a performance of the statute duty, from the several persons who are bound by law to perform statute duty on the highways* [or, *turnpike-road or roads*] *within the said parish* [or, *township*]. *We do hereby authorize the said* A. S. [or, A. S. *and* B. S.] *the surveyor* [or, *surveyors*] *of the highways* [or, *turnpike-road or roads*] *within the said parish* [or, *township*], *to require and receive from the several persons who are bound by law to perform such statute duty, the whole* [or, *one-third*, or *two-thirds*, as occasion may require,] *of the composition in money, in lieu of the statute duty which they are bound to perform on the highways* [or, *turnpike-road or roads*] *within the said parish* [or, *township*] *of* ———, *according to the authority and directions of the act passed in the fifty-fourth year of the reign of his late majesty king* George *the third, intituled* " An act to amend an act of the thirteenth year of his present Majesty, to explain, amend, and reduce into one act, the statutes now in force for the amendment and preservation of the public highways within *England*; and for other purposes." *Given under our hands and seals, this* ——— *day of* ———, *in the year of our Lord* ———.

J. P. (*L. S.*)
K. P. (*L. S.*)

No. LIII.

No. LIII. Justices' Notice to Surveyor to shew Cause why a poor Labourer should not be discharged from Highway Rates or Composition, by stat. 34 *G.* 3. *c.* 74. § 5. *Vide* p. 839.

——— } To Mr. *A. B.*, surveyor of the highways within the
to wit. } parish of ———, in the said county.

WHEREAS E. F. *of* ———, *in your parish, labourer, hath this day made complaint on oath to us, two of his majesty's justices of the peace in and for the said county, in petty sessions assembled, that he wholly gains his livelihood by daily labour, and that by reason of his numerous family, he is in very poor and indigent circumstances, and utterly unable to pay or contribute towards any rates, assessments, or composition, for or in respect of any highways within the said parish, and hath prayed of us, the said justices, that he may be exempted from paying the same. We, the said justices, do therefore hereby give you notice to appear before us at* ———, *in the said county, on* Thursday *the* ——— *day of* ———, *at our petty sessions, to be then and there held, to shew cause why the said* E. F. *should not by us be adjudged to be exempted from the payment of such rates, assessments, or compositions accordingly. Given under our hands and seals, &c.*

No. LIV. Warrant to apprehend the Driver of a Waggon, Cart, &c. for Misbehaviour. *Vide* stat. 13 *G.* 3. *c.* 78. § 60. p. 854. No. LIV.

County of ——— to wit. } To all constables, and other his majesty's officers of the peace for the said county.

THESE are, in his majesty's name, to command you and every of you, upon sight hereof, to take and bring before me, or some other of his majesty's justices of the peace for the said county, the body of A. D., *the driver of a certain ——— belonging to ———, of ———, in the said county ———, to answer to all such matters and things as on his majesty's behalf are on oath objected against him by ———, for riding upon a certain carriage called a ——— in a public highway in the said county, he the said* A. D. *not having some other person on foot or on horseback to guide the same, and which said carriage was not then conducted by some person holding the reins of the horses drawing the same. Hereof fail not at your peril. Given under my hand and seal this ——— day of ———, and in the year of our Lord ———.*

No. LV. Order for Payment of a Forfeiture for Riding on a Waggon, &c. *Vide* stat. 13 *G.* 3. *c.* 78. § 60. p. 854. No. LV.

County of ——— } *WHEREAS* A. O. *of ———, in the said county, labourer, is duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W., *a credible witness,* [or as the case may be,] *for that he the said* A. O., *on the ——— day of ——— instant, in the king's highway, lying between* N. *and* O. *within the parish of* P. *in the said county of ———, did ride upon the cart,* [or as the case may be,] *of his master* L. M. *of ———, in the county of ———, not having some other person on foot, or on horseback, to guide the same, nor holding any reins in his hand to guide the horses drawing the same, whereby he the said* A. O. *hath forfeited the sum of ten shillings. I do, therefore, hereby order the said* A. O. *to pay to* S. H., *surveyor of the highways of the parish of ——— aforesaid, the said sum of ten shillings, to be by him disposed of as the law directs. Given under my hand and seal, the ——— day of ———, in the year of our Lord ———.*

No. LVI. Conviction on stat. 13 *G.* 3. *c.* 78. § 48., of a Surveyor of Highways, for not delivering over his Books of Account to the Churchwardens and Overseers. *Vide* stat. 13 *G.* 3. *c.* 78. § 48. p. 875. No. LVI.

From Paley [64.]

County of ——— } *BE it remembered, that on the ——— day of ———, in the year of our Lord ———, at ———, in the county of ———,* J. S. *came before me* W. H., *one of his majesty's justices of the peace in the said county, and informed me that* W. B., *of the hamlet or division of* B., *in the township of* C., *in the said*

county, labourer, was surveyor of the highways within the said hamlet, for the year ending at Michaelmas *last past, and that afterwards, to wit, on the ——— day of ——— now last past, at* O., *in the county aforesaid, a certain book of accounts of the said* W. B. *as such surveyor, and certain assessments for repairs of the said highways, were settled and allowed by* J. H. *clerk, and* J. W. *esquire, two of his majesty's justices of the peace in and for the said county, pursuant to the statute in such case made and provided; and that afterwards, to wit, from thenceforth to the time of exhibiting the said information and complaint, there was a churchwarden and overseers of the poor duly appointed in and for the township of* C. *aforesaid, including the said hamlet or division, and that the said* W. B. *during all the time last aforesaid, neglected to transmit and deliver to such churchwarden and overseers, or any or either of them, the said book and assessments so settled and allowed as aforesaid, contrary to the form of the statute in such case made and provided* (a) *: Whereupon the said* W. B., *after being duly summoned to answer the said charge, appeared before me on the ——— day of ———, at ———, in the said county, and having heard the charge contained in the said information, declared that he was not guilty of the said offence; but the same being fully proved upon the oaths of* J. S. *and* R. B., *two credible witnesses, it manifestly appears to me the said justice, that he the said* W. B. *is guilty of the offence charged upon him by the said information. It is therefore considered and adjudged by me the said justice, that the said* W. B. *be convicted, and I do hereby convict him of the offence aforesaid, and I do hereby declare and adjudge, that he the said* W. B. *has forfeited the sum of 5l. of lawful money of* Great Britain, *for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under my hand and seal the day and year last aforesaid.*

(a) What follows to the end is pursuant to the schedule xxxv. annexed to the act.

If the party does not appear upon the summons, then after the words "*being duly summoned to answer the said charge,*" insert ("*did not appear before me pursuant to the said summons,*") or if he appeared and refused to make defence, (*did neglect and refuse to make any defence against the said charge, but the same being fully proved, &c. as before.*)

If the party confesses, after the words, "*contained in the said information,*" insert ("*acknowledged and voluntarily confessed the same to be true, and it manifestly appears to me the said justice, as above.*")

No. LVII.

No. LVII. Information upon Oath by the Surveyors of the Highways of a Parish where private Persons are liable to repair, that due Notice had been given them of the Order of two Justices made on them for such Repair at a Special Sessions, and that such Repairs, notwithstanding, have not been made within the time as limited, in order that the Magistrates, or one of them, may present such Highways, &c. *Vide* stat. 13 G. 3. *c.* 78. § 23. p. 831.

County of ——— } *WHEREAS information was made unto* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, by* S. H., *one of the surveyors of*

the highways of the parish of ——— *in the said county, at a special sessions held at* ———, *in and for the hundred of* ——— *in the said county, on the* ——— *day of* ——— *last, that the public streets, causeways, pavements, and highways of* ———, *a town in the said parish of* ———, *in the county aforesaid, were very ruinous, broken, and in great decay, and that the several occupiers of houses in the said town of* ——— *were used, and had been immemorially accustomed, and ought to repair the same, each severally before his own premises. And whereas, in pursuance of an act passed in the thirteenth year of king* George *the third, intituled* " An act to explain, amend, and reduce into one act of parliament, the statutes now in being for the amendment and preservation of the public highways within that part of *Great Britain* called *England*; and for other purposes," *the said two justices did then and there make an order* (*a*) *under their hands and seals, bearing date the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *directing the several persons hereinafter mentioned (among others) to repair their said streets, causeways, pavements, and highways respectively so out of repair in the said town and parish, on or before the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———. *The said* S. H. *and* T. H., *the other surveyors of the highways of the said parish of* ———, *respectively make oath, that they, the said surveyors of the highways of the said parish, did give due notice of the said order to the several persons therein named; that some of the said persons have observed and obeyed the same; but that, on an examination and inspection this morning, they find the streets, causeways, pavements, and highways of the following persons, in the said town of* ———, *and parish highways aforesaid, still unrepaired, and therefore they pray that the said streets, causeways, pavements, and highways so out of repair, together with the persons liable to repair the same, may be severally and respectively presented by some one of his majesty's justices of the peace at the next general quarter sessions of the peace for the said county of* ———, *pursuant to the statute in that case made and provided.*

(a) See Form XXIX. *ante*, p. 896.

Persons liable to repair.	LENGTH. Ft.	In.		BREADTH. Ft.	In.
W. B. - - - - - -	102	0	—	9	0
W. P. *esquire* - - - -	190	0	—	10	0
James B. - - - - -	128	0	—	5	0
John B. (*bounded on the north by lands of* W. P. *esquire, but occupied by* James B., *and on the south by those of the Rev.* J. W. *occupied by* W. J.)	145	0	—	10	0
The same John B. (*bounded on the north by lands occupied by* L. T., *and on the south by lands occupied by* E. J.)	24	0	—	8	0
The same John B. (*bounded on the north by lands occupied by* W. A., *on the south by lands occupied by* S. A., *and on the west side by* L. T.)	32	0	—	4	6

And the said S. H. *and* T. H. *further depose, that the several parts or portions of the streets so out of repair belonging to the said*

John B. to repair, being detached from each other, are bounded as before mentioned. S. H.

Sworn before me, this ——— *day of* ———, J. P. T. H.

No. LVIII.

No. LVIII. Indictment for not repairing a common ancient Highway. See stat. 13 *G.* 3. *c.* 78. § 65. p. 878.

County of ——— } *THE jurors for our lord the king upon their oath present, that from the time whereof the memory of man is not to the contrary, there was and yet is a common and ancient king's highway leading from the town of* ———, *in the county of* ———, *towards and unto the market town of* ———, *in the county of* ———, *used for all the liege subjects of our said lord the king and of his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour at their will and pleasure, and that a certain part of the same king's common highway situate, lying, and being in the parish of* ———, *in the county of* ——— *aforesaid, beginning at the place called* ———, *and so continued towards the market town of* ——— *aforesaid, for the length of* ——— *feet, and being of the breadth of* ——— *feet, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *and continually afterwards until the day of the taking of this inquisition, was and yet is in great decay, for the want of due reparation and amendment of the same; so that the subjects of our said lord the king passing and travelling through the same with their horses, coaches, carts, and carriages could not during the time aforesaid, nor yet can go, return, pass, ride, and labour without great danger; to the great damage and common nuisance of all the liege subjects of our said lord the king passing through that way, and against the peace of our said lord the king, his crown and dignity; and that the inhabitants of the said parish of* ——— *in the said county of* ——— *the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary.*

Or, that A. O. *of* ——— *aforesaid, gentleman, ought, by reason of the tenure of his lands and tenements situate, lying, and being at* ——— *aforesaid, in the county aforesaid, to repair and amend the said highway, when and so often as it shall be necessary.*

No. LIX. Indictment for not repairing an ancient Horse and Footway.

County of ——— } *THE jurors for our lord the king upon their oath present, that from the time whereof the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from* ———, *in the county of* ———, *to* ——— *in the county of* ———, *for all the liege subjects of our said lord the king and his predecessors, on horseback and on foot, to go, return, pass, ride, labour, and drive their cattle at their will, and that a certain part of the same common highway, situate, lying, and being within the parish of* ———, *in the county of* ——— *aforesaid, beginning at a place called* ———, *and so continued towards the said*

——— of ———, *in the county of* ——— *aforesaid, of the length of* ——— *feet, and the breadth of* ——— *feet, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *and continually afterwards until the day of taking this inquisition, at the parish of* ——— *aforesaid, in the county aforesaid, was and yet is very ruinous, miry, deep, broken, and in such decay, for want of due reparation and amendment of the same, that the liege subjects of our said lord the king by and through the same way with their horses and cattle could not, during the time aforesaid, nor yet can go, return, pass, ride, and labour as they ought and were wont to do, without great danger of themselves and of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king; and that the inhabitants of the same parish of* ——— *in the county aforesaid, the same common highway so as aforesaid being in decay, ought to repair and amend, when and so often as it shall be necessary.*

Indictment for encroaching upon a Highway, by building thereupon.

——— } *to wit.* THE *jurors for our lord the king upon their oath present, That* A. O., *late of* ———, *carpenter, the* ——— *day of* ———, *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *in and upon a common highway, in a certain place, commonly called* ———, *there, leading from* ——— *to* ———, *by a certain building there, containing in length* ——— *feet, and in breadth* ——— *feet, by him the said* A. O. *erected and built, hath unlawfully and unjustly encroached, and doth yet encroach, and the building aforesaid, so as is aforesaid erected and built by him the said* A. O. *from the aforesaid* ——— *day of* ——— *in the year aforesaid unto the day of exhibiting this information, at* ———, *aforesaid, in the county aforesaid, with force and arms unlawfully and unjustly hath continued, and doth continue, by reason whereof the common highway aforesaid hath become and is greatly straitened, so that the liege subjects of the said lord the king upon and through the same common highway aforesaid, with their horses, carts, and carriages, cannot go, pass, ride, and labour as they ought and were wont to do, to the great and common nuisance of all the liege subjects of the said lord the king in and through the said common highway going, passing, riding, and labouring, and against the peace of the said lord the king.* Trem. 196. (*a*)

Indictment for inclosing the Highway.

——— } *to wit.* THE *jurors for our said lord the king upon their oath present, That whereas from the time whereof the memory of man is not to the contrary, the liege subjects of our said lord the king had and lawfully used a certain common highway at* ——— *in the said county, in a certain place there called* ———, *leading from the town of* ——— *aforesaid, to the town*

(*a*) Indictment for not repairing a house standing on the highway, ruinous and like to fall down. See Ld. *Raym. Entries*, 25. *Reg.* v. *Watts*, 2 Ld. *Raym.* 856. 1 *Salk.* 357.

of ———, for themselves and their goods without any stoppage or hindrance by any ditches, hedges, or other obstacles whatsoever; nevertheless, one A. O. of ——— aforesaid, in the county of ——— aforesaid, yeoman, on the ——— day of ———, in the ——— year of the reign of ———, with force and arms, at ——— aforesaid, in the county of ——— aforesaid, in the place aforesaid, called ———, upon the common highway aforesaid, a certain ditch and quickset hedge did make, and the said ditch and quickset hedge so as aforesaid made, doth yet continue and keep; to the great stoppage and hindrance of the liege subjects of our said lord the king passing in and through the said common highway, and against the peace of our said lord the king.

Indictment for laying Timber or other Obstructions in the Highway.

——— } *to wit.* } *THE jurors for our lord the king upon their oath present, That A. O., late of ———, in the county aforesaid, yeoman, on the ——— day of ———, in the ——— year of the reign of ———, and on divers other days and times, as well before as afterwards, with force and arms, at ———, in the said county, in and upon the king's common highway there, leading from ——— unto the town of ———, divers great pieces of timber, put and placed, and caused to be put and placed, and the same great pieces of timber so as aforesaid put and placed from the aforesaid ——— day of ———, in the ——— year aforesaid, until the day of exhibiting this information in and upon the king's common highway aforesaid, to be, lie, and remain, hath permitted, and doth still permit, to the grievous and common nuisance of all the lieges and subjects of the said lord the king, upon and through the king's common highway aforesaid, going, passing, riding, and travelling, and against the peace of our said lord the king, his crown and dignity.*

Trem. 197.

Or, ——— *great quantity of dung and other filth, by reason whereas divers hurtful and unwholesome smells from the said dung and other filth did then and there arise, and thereby the air there became, was, and is corrupted and infected* ———.

Or, ——— *cart loads of rubbish ———, by reason whereof the said highway for the whole time aforesaid was straitened and obstructed, so that the liege subjects of our said lord the king could not so freely pass and repass about their lawful business, through the said common highway there, as they ought and have been accustomed* ———.

Indictment for stopping up a Watercourse, whereby the Highway is overflowed.

——— } *to wit.* } *THE jurors for our lord the king upon their oath present, That A. O. late of the parish of ———, in the county aforesaid, yeoman, on the ——— day of ———, in the ——— year of the reign of ———, with force and arms, at the parish aforesaid, in the county aforesaid, a certain ancient watercourse adjoining to the king's common highway, within the said parish, leading from the town of ———, in the county aforesaid, towards and unto ———, with gravel and other materials unlawfully and injuriously did obstruct and stop up; and the said*

watercourse, so as aforesaid obstructed and stopped up from the said ——— day of ———, in the year aforesaid until the day of the taking of this inquisition at the parish aforesaid, in the county aforesaid, unlawfully and injuriously hath continued and still doth continue, by reason whereof the rain and waters that were wont and ought to flow and pass through the said watercourse on the same day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain in the king's common highway aforesaid, and thereby the same was and yet is greatly hurt and spoiled; so that the liege subjects of our said lord the king through the same way with their horses, coaches, carts, and carriages, then and on the said other days and times, could not nor yet can go, return, pass, ride, and labour as they ought and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king.

No. LX. Certificate of two Justices, that an indicted Road is in good repair. (a) *Vide ante*, §.XVI. No. LX.

——— to wit. } *WE two of his majesty's justices of the peace of the county of ———, acting in and for the said county, do hereby certify that we have this day viewed and surveyed a certain part of a common and ancient king's highway leading* [here describe the road] *indicted at the last ——— assizes,* [or, *at the last general quarter sessions of the peace*] *for the said county, and that the said part of the said highway so indicted as aforesaid, is now in good and sufficient repair, and likely so to continue. Given under our hands and seals this ——— day of ———.*

J. P. (L. S.)
K. P. (L. S.)

Highways, Turnpike.

[3 G. 4. c. 126.—4 G. 4. c. 16. c. 35. c. 95.—5 G. 4. c. 69.]

By stat. 3 *G*. 4. *c*. 126., intituled "*An act to amend the general Laws now in being for regulating Turnpike Roads in that part of* Great Britain *called* England;" (passed 6th *August*, 1822). 3 G. 4. c. 126.

§ 1. It is enacted, that from and after the 1st day of *January*, 1823, the following acts, viz.

13 *G*. 3. *c*. 84.	18 *G*. 3. *c*. 28.
14 *G*. 3. *c*. 14.	18 *G*. 3. *c*. 63.
14 *G*. 3. *c*. 36.	21 *G*. 3. *c*. 20.
14 *G*. 3. *c*. 57.	25 *G*. 3. *c*. 57.
14 *G*. 3. *c*. 82.	52 *G*. 3 *c*. 145.
16 *G*. 3. *c*. 39.	53 *G*. 3. *c*. 82.
16 *G*. 3. *c*. 44.	55 *G*. 3. *c*. 119.
17 *G*. 3. *c*. 16.	57 *G*. 3. *c*. 37.

shall be and the same are hereby repealed.

(a) A certificate of justices, certifying that a highway, which is the subject of an indictment, is in a state of repair, is admitted, in common practice, as an adjudication of the state of repair, after a plea of guilty pleaded by the parish. *Rex* v. *Sir Joseph Mawbey, Bart. and others*, 6 *T. R.* 630. 635. 1 *Phill. Ev.* 6th *Ed*. 362.

3 G 4. c. 126. Not to revive repealed acts, nor to prevent the recovery of penalties incurred for offences against acts repealed.

§ 2. Provides, that nothing herein contained shall extend to revive or give effect to any act repealed by the said recited acts or any of them.

§ 3. Also provides, that nothing therein contained shall extend to prevent the suing for and recovery of any penalty incurred by any offence committed against the provisions of the said recited acts, previous to the repeal thereof by this act, or to prevent or defeat any prosecution commenced or to be brought for such offence, but all penalties incurred may be sued for, and all encroachments, nuisances, and other offences made or committed previous to the repeal of the said acts, against the provisions of any of them, may be abated or prosecuted in the same manner as if this act had not passed.

It is proposed to insert the various enactments of this very important statute, and also the provisions of several statutes passed since, in the following divisions or sections:

§ I. *Provisions of stat. 3 G. 4. c. 126. extended to all present and subsequent Turnpike Acts.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

II. *Qualifications of, and who shall be Trustees and Commissioners.*
[3 G. 4. c. 126. — 4 G. 4. c. 95. — 5 G. 4. c. 69.]

III. *Actions and Proceedings against Trustees and Commissioners.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

IV. *Officers in general. — Duties of.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

V. *Meetings and Proceedings of Trustees.*
[3 G. 4. c. 126. — 4 G. 4. c. 35. — 4 G. 4. c. 95.]

VI. *Payment of Subscriptions enforced.*
[3 G. 4. c. 126.]

VII. *Mortgage of Tolls.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

VIII. *Powers to make and improve Roads.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

IX. *Powers to get Materials.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

X. *Construction of, Breadth and Tire of Wheels.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XI. *Weights of Carriages.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XII. *Weighing engines to be erected, with additional Tolls for over-weight.*
[3 G. 4. c. 126.]

XIII. *Exemptions from Tolls.*
[3 G. 4. c. 126. — 4 G. 4. c. 16. — 4 G. 4. c. 95.]

XIV. *Tolls to be paid upon Carriages affixed to others, and for Oxen.*
[3 G. 4. c. 126.]

XV. *Tables of Tolls to be put up at Turnpike Gates. — Recovery of Tolls — Penalty for evading.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XVI. *Composition for Tolls — Reduction or Advance.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XVII. *Erecting Toll Gates.*
[3 G. 4. c. 126.]

XVIII. *Farming the Tolls.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XIX. *Property of Toll-houses vested in Trustees.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.

XX. *Statute Duty, and other Labour.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXI. *Apportionment of Fine on Indictment for non-repair.*
[3 G. 4. c. 126.]

XXII. *Causeways — Ditches — Drains.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXIII. *Annoyances to be removed.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXIV. *Branches of Trees and Hedges to be cut, &c.*
[3 G. 4. c. 126.]

XXV. *Milestones, &c. to be erected.*
[3 G. 4. c. 126.]

XXVI. *Watering Roads, and what shall be deemed the Centre.*
[3 G. 4. c. 126.]

XXVII. *Nuisances — Gates — Windmills.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXVIII. *Cattle straying may be impounded.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXIX. *Skid-pans to be used.*
[3 G. 4. c. 126.]

XXX. *Destroying Turnpike Gates and doing other Damage — Resisting the Execution of this Act.*
[3 G. 4. c. 126.]

XXXI. *Carriages to be marked.*
[4 G. 4. c. 95.]

XXXII. *Regulations respecting Drivers of Carriages.* [3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXXIII. *Apprehension of Offenders.* [3 G. 4. c. 126.]

XXXIV. *Prosecutions — Recovery and Application of Penalties.* [3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXXV. *Appeal.* [4 G. 4. c. 95.]

XXXVI. *Power to administer Oaths.* [3 G. 4. c. 126.]

XXXVII. *Limitation of Actions.* [3 G. 4. c. 126.]

XXXVIII. *Exceptions from the Operation of this Act.* [3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXXIX. *Consent to Turnpike Bill may be signified by Affidavit.* [3 G. 4. c. 126.]

XL. *Forms of Proceedings.* [3 G. 4. c. 126.]

§ I. Provisions of this Act extended to all present and subsequent Turnpike Acts.

[3 G. 4. c. 126. § 4. — 4 G. 4. c. 95. § 88.]

3 G. 4. c. 126.

After Jan. 1, 1823, this act to extend to all local acts for making and repairing turnpike roads.

By stat. 3 *G*. 4. *c*. 126. § 4. After reciting, that whereas it is of great importance that one uniform system should be adhered to in the laws for regulating the management and maintenance of turnpike roads throughout the kingdom; it is enacted, that from and after the 1st of *January*, 1823, all the enactments, provisions, matters, and things in this act contained, shall extend, and be deemed, construed, and taken to extend, to all acts of parliament now in force, and to all acts which shall hereafter be passed, for making, widening, turning, amending, repairing, or maintaining any turnpike road or roads in that part of *G. B.* called *England*, save and except where any other commencement is particularly directed by this act, and as to such enactments, provisions, matters, and things as shall be expressly referred to, and varied, altered, or repealed by any such act or acts as shall be hereafter passed.

4 G. 4. c. 95. Extending powers of former act, where not hereby altered or repealed, to this act.

By stat. 4 *G*. 4. *c*. 95. § 88. All the powers, authorities, provisions, regulations, privileges, penalties, forfeitures, clauses, restrictions, matters, and things whatsoever, contained in the said recited act, (*viz*. 3 *G*. 4. *c*. 126.) so far as the same are not expressly altered or repealed by this act, shall extend and be construed to extend to operate and be in force with respect to this act, and shall be applied and put in execution, as fully and effectually to all intents and purposes, as if the same were repeated and re-enacted in the body of this act, and were made part thereof; and the said recited

act and this act shall, as to all matters and things whatsoever (except as aforesaid), be considered as one act.

§ II. Qualification of, and who shall be Trustees and Commissioners.

[3 G. 4. c. 126. § 61, 62, 63, 64, 65, 66.—4 G. 4. c. 95. § 32, 33, 34, 35, 36, 37.]

By stat. 3 *G.* 4. *c.* 126. § 61. It is enacted, that all H. M.'s justices of the peace for the time being acting for the county or counties through which any turnpike road now does or hereafter shall pass, shall be added to and joined with the trustees or commissioners for making, repairing, or maintaining every such turnpike road, and shall, on qualifying themselves as hereafter mentioned, have all the same powers and authorities, to all intents and purposes, as if the said justices had severally been named or elected trustees or commissioners in or under any act or acts of parliament under which such roads shall be made, repaired, or maintained. **3 G. 4. c. 126. Justices of peace to be trustees.**

But by stat. 4 *G.* 4. *c.* 95. § 34. Nothing in stat. 3 *G.* 4. *c.* 126. or in this or any other act contained, shall extend or be construed to extend so as to require any justice of the peace acting for any county to take or subscribe any oath of qualification before he shall act as trustee in the execution of any act or acts for making, repairing, or maintaining any turnpike road. **4 G. 4. c. 95. Not to extend to magistrates taking oath of qualification as trustees.**

And by stat. 5 *G.* 4. *c.* 69. After reciting the titles of stats. 3 *G.* 4. *c.* 126. — 4 *G.* 4. *c.* 95. and § 61. of stat. 3 *G.* 4. *c.* 126. (*supra*); and that it is expedient that H. M.'s justices of the peace acting for any riding, division, or soke should also be enabled to act as trustees for the repair of turnpike roads: it is enacted, that from and after the passing of this act, 17th *June*, 1824., all H. M.'s justices of the peace for the time being, acting for the county or counties, riding or ridings, division or divisions, soke or sokes, through any part of which any turnpike road now does or hereafter shall pass, shall have such and the like powers and authorities for the making and repairing any such turnpike road, and be subject to the same rules and regulations, by virtue of or under the said recited acts, as any of H. M.'s justices of the peace acting for any county or counties. **5 G. 4. c. 69. Justices acting for ridings or divisions, &c. through which roads pass shall have the like powers for making and repairing turnpike roads as justices for counties.**

By stat. 3 *G.* 4. *c.* 126. § 62. No person who shall hereafter be chosen or appointed a trustee or commissioner, shall be qualified or capable of becoming and acting as a trustee or commissioner in the execution of any act for making, repairing, or maintaining any turnpike road, unless he shall be in his own right, or in the right of his wife, in the actual possession or receipt of the rents and profits of freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of 100*l.* above reprizes, or shall be heir apparent of a person possessed of freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of 200*l.* above reprizes; and unless he shall, before he shall act as such trustee or commissioner, take and subscribe the oath or affirmation following, before any two or more of the trustees or commissionerss appointed or to be appointed by or in pursuance of such **3 G. 4. c. 126.**

3 G.4. c.126. act, who are hereby authorised and empowered to administer the same, in the words or to the effect following; (that is to say,)

I ———, *do swear* [or, being of the people called Quakers, *do solemnly affirm,*] *that I truly and* bonâ fide *am, in my own right* [or, *in the right of my wife*], *in the actual possession and enjoyment of* [or, *in the receipt of rents and profits issuing out of*] *freehold or copyhold lands, tenements or hereditaments, of the clear yearly value of one hundred pounds above reprizes,* [or, *am heir apparent of* ———, *who to the best of my knowledge is seised of freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of two hundred pounds above reprizes,*] [or, *that I am possessed of a personal estate of ten thousand pounds, clear of all debts and incumbrances,* as the case may be.] *So help me God.*

[or, being a Quaker, omit the words '*So help me God.*']

Qualification by personal property within 10 miles of London. § 63. " Nothing herein contained shall prevent any person from acting as a trustee or commissioner of any turnpike roads, any part of which are or shall be situate within ten miles of the *Royal Exchange in London,* who shall be possessed of personal property to the amount or value of 10,000*l.*, after payment of his debts."

4 G.4. c.95. Trustees to be sworn. By stat. 4 *G.*4. *c.*95. § 32. No person who shall after the passing of this act be chosen a trustee or a commissioner by or under any act or acts for making or maintaining any turnpike road, shall act as such trustee or commissioner, unless he shall, before he shall act as such [except in administering the oath or affirmation hereinafter mentioned], take and subscribe before one or more of the said trustees or commissioners (who is and are hereby empowered to administer the same) the oath or affirmation following; (that is to say,)

Oath. I A. B. *do swear,* [or, being one of the people called Quakers, *do solemnly affirm,*] *that I will truly and impartially, according to the best of my judgment, execute and perform the several powers, authorities, and trusts reposed in me as a trustee* [or, *commissioner*] *by virtue of an act passed in the third year of the reign of his majesty king* George *the fourth, intituled* " An act to amend the general laws now in being for regulating turnpike roads in that part of *Great Britain* called *England;*" *and also an act passed in the fourth year of the reign of his said majesty, intituled* [here set forth the title of this act (*a*);] *and also an act passed in the* ——— *year of the reign of his majesty* ———, *intituled* [here set forth the title of the act under which such trustee or commissioner shall claim to act.] *So help me God.*

[or, being a Quaker, omit the words '*So help me God.*']

Penalty 50*l.* And if any such person shall act (except as aforesaid) before he shall have taken and subscribed the said oath or affirmation, every such person shall for every such offence forfeit the sum of 50*l.* with full costs of suit, to any person who shall inform or sue for the same in any of H. M.'s courts of record at *Westminster*, by action of debt, &c.: provided always, that no act or proceeding,

Proceedings valid, though oath omitted which shall be done or performed by any such person who shall

(*a*) " An act to explain and amend an act, passed in the third year of the reign of his present majesty, to amend the general laws now in being for regulating turnpike roads in that part of *Great Britain* called *England.*"

have omitted or neglected to take and subscribe the said oath or affirmation by this act prescribed, shall be hereby impeached or rendered nugatory; but all such proceedings shall be as valid and effectual as if such person had taken such oath or affirmation previously to his having acted as such trustee or commissioner as aforesaid.

4 G.4. c.95.

to be taken under recited act.

§ 33. If any person being a quaker shall have been or shall hereafter be appointed, by or under any act or acts of parliament for making, repairing, or maintaining any turnpike road, a trustee or commissioner of such road, and shall be in other respects qualified according to the provisions of stat. 3 *G*.4. *c*. 126., it shall be lawful for such person, on taking and subscribing the affirmation in the said act and this act, to act as a trustee or commissioner, without being subject or liable to any penalty or forfeiture by such act or acts imposed for acting, not having taken and subscribed the oaths therein contained.

Quakers making affirmation may act as trustees.

§ 35. It is declared and enacted, that where any person shall, previously to the 1st day of *January* 1823, have been duly qualified according to the provisions of, and taken the oath prescribed in that behalf by stat. 13 *G*.3. *c*. 84.; or have been duly qualified according to the provisions of, and taken the oath prescribed by any other act or acts of parliament for making, maintaining, or repairing any particular turnpike road, previously to the said 1st day of *January*, and shall have been then acting as a trustee or commissioner in the execution of such act or acts, it shall and may be lawful for such person to continue to act as a trustee or commissioner under such act or acts, without requalifying, or taking the oath prescribed in and by the said recited act of the 3 *G*. 4. *c*. 126.; and although such person may not be possessed of freehold or copyhold lands, tenements, or hereditaments, or be heir apparent to any person possessing the same, to the amount required by the said act.

Explaining trustees' qualification.

§ 36. Provided always, that if any trustee or commissioner who shall have been acting as such previously to the said 1st day of *January*, 1823, shall have lost or parted with subsequently thereto, or shall hereafter lose or part with, by sale, assignment, bankruptcy, insolvency or otherwise, the qualification in respect of which he acted as a trustee or commissioner, and shall not be possessed of the qualification required by the said act of the 13 *G*. 3. *c*. 84., or by the act or acts in the execution of which such trustee or commissioner shall have acted, every such trustee or commissioner shall therefrom become disqualified and be incapable of any longer acting as a trustee or commissioner; and if any such trustee or commissioner so becoming disqualified shall presume to act in execution of the act or acts under which he previously acted, he shall for every such offence incur and be liable to the penalties and forfeitures imposed by the said recited act of the third year aforesaid, on persons acting as trustees or commissioners not being duly qualified, to be sued for and recovered under the powers and provisions of the said act.

Trustee losing his qualification to become incapable of acting.

§ 37. And whereas in and by the said recited act it is amongst other things provided, that no trustee or commissioner shall have any share or interest in, or be in any manner directly or indirectly concerned in any contract or bargain for making or repairing, or in any way relating to the road for which he shall act, or

Trustees having shares in canal companies, &c. which shall contract for

4 G. 4. c. 95.

conveyance of materials on roads not liable to penalty on account of such contract.

for building or repairing any toll house or toll gate, or weighing engine thereon, or for supplying any materials for the use thereof, nor shall let out for hire any waggon, wain, cart, or other carriage, or any horse, cattle, or team, for the use of any turnpike road for which he shall act as trustee or commissioner, nor by himself, or by any other person for or on his account, directly or indirectly, receive any sum or sums of money to his use or benefit, out of the tolls collected on the road for which he shall act during the time he shall be acting as a trustee or commissioner of such road; and in and by the said recited act any trustee or commissioner offending in any of the cases aforesaid is thereby made liable to pay the penalty of 100*l.*; it is enacted, that no person being a trustee or commissioner of any turnpike road, shall be liable to the said penalty of 100*l.*, or any other penalty or forfeiture, for or by reason of his being only a proprietor or holder of any share in any canal or railway company which shall contract with the trustees or commissioners of the road for which such person shall act as a trustee or commissioner, for the carriage or conveyance of any materials for the repair of such road.

3 G. 4. c. 126. Trustees not to act where interested, or while keeping a victualling house, &c.

By stat. 3 *G.* 4. *c.* 126. § 64. No person appointed or to be appointed a trustee or commissioner in or by virtue of any act for repairing turnpike roads, shall be capable of acting as such in the execution of any such act, in any case where he shall be personally interested (except as hereinafter provided), nor during the time he shall keep a victualling house, or other house of public entertainment, or who shall sell wine, cider, beer, ale, spirituous or other strong liquors by retail, or who shall be a lessee or farmer of the tolls on any turnpike road, or of any part or parts thereof; and if any person not being qualified as aforesaid, or being disqualified by any of the causes aforesaid, or not having taken and subscribed the oath herein-before mentioned, or being a Quaker, not having made and subscribed the affirmation herein-before mentioned, shall nevertheless presume to act as a trustee or commissioner in the execution of any such act, every such person shall for every such offence forfeit the sum of 50*l.* to any person or persons who shall sue for the same, to be recovered, with full costs of suit, in any of H. M.'s courts of record at *Westminster*, by action of debt or on the case, or by bill, plaint, suit, or information, wherein no essoign, protection, wager of law, or more than one imparlance shall be allowed; and the person so sued or prosecuted shall prove that he is qualified, and not disqualified as aforesaid, or otherwise shall pay the said penalty, without any other proof or evidence on the part of the prosecutor, than that such person had acted as a trustee or commissioner in the execution of any act for repairing turnpike roads: Provided, that no act or proceeding touching the execution of any such act, which shall be done or performed by any such unqualified or disqualified person previously to his being convicted of the offence before mentioned, shall be thereby impeached or rendered nugatory, but all such proceedings shall be as valid and effectual as if such person had been duly qualified: Provided, that no mortgagee or assignee of any mortgage or other security, or any lender of money upon the credit of the tolls, or receiving interest thereout for the same, shall on that account only be deemed unqualified to act as a trustee or commissioner in the execution of any such act; and any trustees or commissioners

Penalty for acting not being qualified, 50*l.*

Person sued to prove his qualification.

Proceedings not to be impeached on account of disqualification.

Mortgagees on the tolls not disqualified on that account.

appointed or to be appointed under any such act, who are or shall be in the commission of the peace, may act as such justices of the peace, in the execution of any such act, notwithstanding their being such trustees or commissioners, except in such cases only wherein they shall be personally interested otherwise than as a trustee, commissioner, mortgagee, assignee, lender of money, or holder of any security on the credit of the tolls granted by any such act. 3 G.4. c.126.

Trustees and commissioners not to hold places of profit or be concerned in contracts, &c.

§ 65. No trustee or commissioner of any turnpike road shall, from and after this act shall be in force, enjoy any office or place of profit under any act in execution of which he shall have been appointed, or shall act as trustee or commissioner, or have any share or interest in, or be in any manner directly or indirectly concerned in, any contract or bargain for making or repairing or in any way relating to the road for which he shall act, or for building or repairing any toll house, toll gate, or weighing engine thereon, or for supplying any materials for the use thereof; nor shall any such trustee or commissioner let out for hire any waggon, wain, cart, or other carriage, or any horse, cattle, or team, for the use of any turnpike road for which he shall act as a trustee or commissioner; nor by himself, or by any other person for or on his account, directly or indirectly, receive any sum or sums of money to his use or benefit out of the tolls collected on the road for which he shall act, during the time he shall be acting as a trustee or commissioner of such road; and if any person after having been appointed or elected a trustee or commissioner of any turnpike road, shall, without having first duly resigned such office at some meeting of the trustees of the road for which he shall have been elected or appointed, hold any such office or place, or be concerned in any such contract or bargain, or shall sell any such tools or implements, or let out for hire any waggon, wain, cart, or carriage, horse, cattle, or team, or receive any money out of the tolls as aforesaid, every trustee or commissioner so offending shall for every such offence forfeit the sum of 100*l*. to any person or persons who shall sue for the same, and shall from and after the conviction of any such offence be incapable of acting as a trustee or commissioner of any turnpike road; and all acts, orders, matters, and things made or done as a trustee or commissioner by the party so convicted, shall from thenceforth be null and void, to all intents and purposes, and all and every such contract and bargain shall be and the same is hereby declared to be void, and shall not be enforced against or carried into effect by the other trustees or commissioners entering into the same: Provided, that all acts, orders, matters, and things, made or done by such trustee or commissioner previously to his being convicted of any such offence, shall be good, valid, and effectual; and nothing in this enactment contained shall extend or be deemed or construed to extend to any trustee or commissioner who shall receive any sum or sums of money paid out of the tolls of any turnpike road, as or by way of purchase money, damages, rent, recompence, or satisfaction agreed upon or awarded to such trustee or commissioner, for any lands, grounds, tenements, or hereditaments, purchased or taken for the purpose of diverting or altering, or for the use of the turnpike road for which he shall act as a trustee or commissioner, or for a repository for

3 G.4. c.126.

materials to be used thereon, or for the damage done to any inclosed or private grounds of any such trustee or commissioner, in taking materials therefrom, or in carrying or conveying them over the same, or to prevent any such trustee or commissioner from selling or disposing of, for the use of the turnpike road, any materials, or any timber grown or growing on the land or grounds of such trustee or commissioner.

For appointing new trustees on vacancies.

§ 66. When any of the trustees or commissioners, save and except the justices of the peace, appointed or to be elected and appointed under any act of parliament for making, repairing, or maintaining any turnpike road, shall die, or by bankruptcy, insolvency, or otherwise, become disqualified to act, or by writing under their hands refuse to act in the execution of such act, it shall be lawful for the surviving or remaining trustees or commissioners from time to time to elect and appoint one other fit person, qualified as aforesaid, to be a trustee or commissioner in the room of every trustee or commissioner dying or becoming disqualified or refusing to act as aforesaid; provided that notice of the time and place of meeting of the trustees or commissioners for every such election be given by the clerk or clerks to such trustees or commissioners, by affixing the same in writing upon all the toll gates or turnpikes erected upon the said road for which they shall act as trustees or commissioners, and by inserting such notice in one or more of the newspapers circulating in that part of the country where such road shall pass, 14 days at least before every such meeting; and every person who shall be elected and appointed a trustee or commissioner pursuant to the directions of this act, shall and may act with the surviving and remaining trustees or commissioners in the execution of such act, to all intents and purposes, as if he had been therein named and appointed a trustee or commissioner.

Notice to be given fourteen days before the meeting.

§ III. Actions and Proceedings against Trustees and Commissioners.

[3 G. 4. c. 126. § 134. —4 G. 4. *c*. 95. § 71.]

If action be brought against a trustee, evidence of his being appointed and acting sufficient.

By stat. 3 *G*. 4. *c*. 126. § 134. It is enacted, that in all cases where any action shall be brought by or against any trustee or commissioner of any turnpike road, evidence of such trustee or commissioner *having acted as such*, together with the act of parliament by which he was appointed, or the order, or a copy of the order for his appointment or election, in case he was appointed or elected by the trustees or commissioners, shall be sufficient proof of his being a trustee or commissioner.

4 G.4. c.95.
In case of non-payment of compensation for damages, &c. by the said trustees, &c. the same to be levied by distress of the goods vested in

By stat. 4 *G*. 4. *c*. 95. § 71. When and as often as any sum or sums of money shall be directed or ordered to be paid by any justice or justices of the peace, in pursuance of stat. 3 *G*. 4. *c*. 126. or this act, or any act relating to turnpike roads, as or by way of compensation or satisfaction for any materials or costs, or for any damage, spoil, or injury, of any nature or kind whatsoever, done or committed by such trustees or commissioners, or any person or persons acting by or under their authority, and such sum or sums of money shall not be paid by the said trustees or commissioners to the party or parties entitled to receive the same, within ten

days after demand in writing shall have been made from the clerk to the said trustees or commissioners, or their treasurer in pursuance of the direction or order made by such justice or justices, and in which demand the order of such justice or justices shall be stated, then and in such case the amount of such compensation or satisfaction shall and may be levied and recovered by distress and sale of the goods and chattels vested in such trustees or commissioners by virtue of any act for making or repairing turnpike roads, or of the goods and chattels of their treasurer for the time being, under a warrant to be issued for that purpose by such justice or justices, which warrant any such justice or justices is and are hereby authorised and required to grant under his hand and seal, or their hands and seals, on application made to him or them for that purpose by the party or parties entitled to receive such sum or sums of money as or by way of compensation or satisfaction for any such materials, costs, damages, spoil, or injury as aforesaid; and in case any overplus shall remain after payment of such sum or sums of money, and the costs and expences of hearing and determining the matter in dispute, and also the costs and expences of such distress and sale, then and in such case such overplus shall be returned on demand to the said trustees or commissioners, or to their treasurer for the time being, as the case may be: Provided always, that it shall and may be lawful for such treasurer to retain, out of any monies which he shall have received or shall receive in pursuance of any such act, or the said recited act or this act, all such damages, costs, charges, and expences as he shall have sustained or be put unto by virtue of any such warrant as aforesaid.

4 G. 4. c. 95.

trustees, &c. or their treasurer.

§ IV. Officers in general, — Appointing, Duties of, &c.

[3 G. 4. c. 126. § 51, 52. 54. 59. 71. 75, 76. 136.—4 G. 4. c. 95. § 30, 31. 43, 44, 45. 47. 49. 50.]

By stat. 4 *G.* 4. *c.* 95. § 43. The trustees or commissioners for making or maintaining any turnpike road may, and they are hereby empowered, by writing under their hands, to appoint such collector or collectors of the tolls arising on such road, and clerk or clerks, treasurer or treasurers, surveyor or surveyors of the said road, and such other officers as the said trustees or commissioners shall think necessary; and such collectors, clerks, treasurers, surveyors, and other officers, or any of them, from time to time to remove, and on removal, death, or resignation of any such collectors, clerks, treasurers, surveyors, or other officers, to appoint others in their stead; and may and are hereby authorised and empowered, out of any of the monies arising on such turnpike road, to allow and pay to the several collectors, clerks, treasurers, surveyors, and other officers, and to such other person or persons as shall be assisting them or any of them, in or about the execution of the act for making or maintaining such road, and the said recited act and this act, such salaries, rewards, and allowances for their attendance, care, labour, and services, as such trustees or commissioners shall deem reasonable.

4 G. 4. c. 95. Appointing officers, salaries, &c.

§ 44. Provided that it shall not be lawful for the trustees or commissioners acting under any act for making or maintaining any turnpike road to continue or appoint the person or per-

Surveyor and clerk not to be the same person.

4 G.4, c.95. sons who has been or may be appointed their clerk or clerks in the execution of such act, or the partner of any such clerks, or the clerk or clerks, or other person or persons in the service or employ of any such clerk or clerks, the surveyor or surveyors for the purposes of such act; or to continue or appoint any person or persons who has been or may be appointed surveyor or surveyors, or the partner or partners of any such surveyor or surveyors, the clerk or clerks to the said trustees or commissioners; and if any person shall accept both the offices of clerk and surveyor for the purposes of such act, or if any person, being the partner of any such clerk or clerks, or the clerk or clerks, or other person or persons in the service or employ of any such clerk or clerks, shall accept the office of surveyor, or being the partner of any such surveyor or surveyors, shall accept the office of clerk in the execution of such act, and if any such surveyor shall hold or accept any place or office of profit or trust under the said trustees, other than that of surveyor, every such person so offending shall, for every such offence, forfeit and pay the sum of 50*l.* to any person who shall sue for the same, to be recovered, with full costs of suit, in any of H. M.'s courts of record at *Westminster*, by action of debt or on the case, or by bill, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance shall be allowed.

Surveyor not to be concerned in contracts or sell materials.

§ 45. If the surveyor of any turnpike road shall have any part, share, or interest in any contract or bargain for work, materials, tools, or other things, to be done or provided upon, for, or on account of any road or bridge, or any part thereof, under his care and management, or shall upon his own account, directly, or indirectly, let to hire any team, or sell or dispose of any timber, stone, or other materials to be used or employed in making or repairing any such road or bridge, he shall forfeit for every such offence the sum of 50*l.*

Trustees may appoint temporary collectors, &c. in certain cases.

§ 49. Upon the death, incapacity, refusal, neglect, or absconding of any collector or receiver of tolls at any turnpike or weighing machine upon any turnpike road, any two or more trustees or commissioners, though not assembled at any meeting, by writing under their respective hands, shall and may nominate and appoint a proper person in his place, to continue until the then next meeting of the trustees or commissioners of such road, in the stead of such collector or receiver as shall so die, become incapable, refuse, neglect, or abscond; which person so nominated and appointed shall have the like power and authority, and be answerable and accountable in the same manner in all respects as the person who shall die, become incapable, refuse, neglect, or abscond, would have had or been subject to if living; and if any collector or receiver of tolls as aforesaid, who shall be discharged from his office by the said trustees or commissioners, or the wife or widow, or any of the children, family, or representatives of any collector or receiver who shall die, abscond, refuse, or neglect to perform his duty, or be discharged, or any other person having the possession of any toll-house or buildings, or weighing machine erected by virtue of any act for repairing turnpike roads, or the said recited act, shall neglect or refuse to deliver up such possession for the space of three days after demand thereof made, and notice in writing given for that purpose, by any two or more

of such trustees or commissioners, or by their clerk or treasurer, then and in any of the said cases it shall and may be lawful for any justice of the peace for the county or place where such toll-house or building, or weighing machine shall be situate, by warrant under his hand and seal (No.XV.), to order any constable, or other peace officer for the same county or place, with such assistance as shall be necessary, to enter such house or building, or weighing machine in the day-time, and to remove the person who shall be found therein, together with his, her, or their goods, out of the same, and to put the said trustees or commissioners, or any of their officers, in the possession thereof.

4 G.4. c.95.

(No. XV.)

§ 51. No collector or person renting such tolls, or residing in such toll-house as aforesaid, and no apprentice or servant of any such collector or person, shall thereby gain a settlement in any parish or place whatsoever; and no tolls to be taken at any gate erected or to be erected by the trustees or commissioners of any turnpike road, nor toll-house erected or to be erected for the purpose of collecting the same, nor any person in respect of such tolls or toll-house, shall be rated or assessed towards the payment of any poor's rates, or any other public or parochial levy whatsoever.

3 G.3. c.126. No person to gain a settlement by renting tolls or by residence in toll houses.

By stat. 4 *G.* 4. *c.* 95. § 31. It is enacted, that no collector or receiver of any tolls or penalties for overweight, residing in any house or building erected or used by the trustees of any turnpike road for the residence or accommodation of persons appointed for weighing any waggons or other carriages, and no apprentice or servant of any such collector or receiver shall thereby gain a settlement in any parish or place; and that no tolls or penalties for overweight to be taken at any house or weighing machine erected, or to be erected, or adjoining to any turnpike road, nor any person whatsoever in respect of such tolls or penalties, or any house or building as aforesaid, shall be rated or assessed towards the payment of any poor's rates, or any other public or parochial rate or levy whatsoever.

4 G.4. c.95. Toll collectors, &c. residing in any house erected by the trustees not to gain a settlement.

By stat. 3 *G.* 4. *c.* 126. § 52. If any collector, or other person appointed to collect the tolls on any turnpike road, shall permit or suffer any waggon, wain, cart, or other carriage to be drawn or pass upon any turnpike road within the view or with the knowledge of such collector or toll-gatherer, or to pass through any toll-gate or bar, with wheels of a less breadth, or of a different construction, than by this act allowed, or without such names and descriptions painted thereon as are hereinafter directed, and shall not, within the space of one week, proceed for the recovery of the forfeiture or penalty hereby inflicted, or shall allow any coach, chariot, waggon, cart, or other carriage, or any passenger, to pass through any toll-gate at which such collector or other person shall be stationed, without paying the toll payable, or shall be guilty of any other misconduct in his office, every collector or other person so offending, and being thereof convicted before one justice, shall forfeit for every such offence any sum not exceeding *5l.*, as the justice by and before whom such offender shall be convicted shall judge proper.

3 G.4. c.126. Collectors permitting carriages to pass otherwise than allowed by the act, and not prosecuting, to forfeit not exceeding *5l.*

Collector guilty of misconduct.

By stat. 4 *G.* 4. *c.* 95. § 30. Every toll-collector on every turnpike road shall place, or cause to be placed, on some conspicuous parts of the fronts of the several toll-houses at which they shall be

4 G.4. c.95. Toll collectors to put up their names;

4 G.4. c.95.

respectively stationed, and so that the same shall appear to public view, their christian and surnames, painted in black on a board with a white ground, each of such letters of such name or names to be at least two inches in length, and of a breadth in proportion, and such board shall be and remain at such toll-house during the whole of the time that the person whose name shall be expressed thereon shall be on duty thereat; and if any collector of the said tolls shall not place such board, and keep the same there during the time he shall be such collector as aforesaid, or shall demand and take a greater or less toll from any person than he shall be authorized to do by virtue of the powers of any act, or of the orders and resolutions of the trustees or commissioners made in pursuance thereof, or shall demand and take a toll from any person or persons who shall be exempt from the payment thereof, and who shall claim such exemption, or shall refuse to permit or suffer any person or persons to read, or shall in anywise hinder any person or persons from reading the inscriptions on such board, or shall refuse to tell his christian and surname to any person or persons who shall demand the same, on being paid the said tolls, or any of them, or shall, in answer to such demand, give a false name or names, or shall refuse or omit to give to the person paying the toll a ticket denoting the payment of the tolls, and naming and specifying the toll-gate at which such ticket has been delivered, and the toll-gate or toll-gates (if any) freed by such payment, or upon the legal toll being paid or tendered, shall unnecessarily detain or wilfully obstruct, hinder, or prevent any passenger or passengers from passing through any turnpike or toll-gate, or shall make use of any scurrilous or abusive language to any trustee or commissioner, traveller or passenger, then and in every such case every such toll-collector shall forfeit and pay any sum not exceeding *5l.* for every such offence.

taking greater or less toll, &c.

obstructing passengers;

Penalty *5l.*

Toll collectors taking more toll than allowed, to be proceeded against before a justice, and not by indictment.

§ 50. Provided always, that after the passing of this act, no person who shall ask and take more toll than he is authorized to take by this act, or any act now in force, or by any act hereafter to be made and passed, shall be prosecuted by indictment for extortion, or otherwise, nor shall any other proceeding be adopted against such person for the offence aforesaid, other than by prosecuting for the forfeiture and penalty before a justice of the peace, as is herein or by the said recited act directed. *See R.* v. *Hamlyn*, 4 *Campb.* 379.

3 G.4. c.126. If toll collectors abscond, penalties to be levied on lessees of tolls.

By stat. 3 *G.* 4. *c.* 126. § 54. In case any toll-collector, or person acting as such, shall offend against any of the provisions of this act, whereby any penalty shall be incurred, and shall abscond or absent himself so as not to be found, then it shall and may be lawful for any justice of the peace, before whom any such toll-collector or person shall have been convicted of any such offence, in case of such collector or other person absconding after conviction, or in case of his or her absconding previous to conviction, then for any other justice of the peace acting for the county, on an examination of the circumstances, and ascertaining by the examination of witnesses that such offence has been committed by the person absconding, to order and adjudge that the penalty incurred as aforesaid shall be paid by the lessee, or farmer of the tolls under whom such collector or other person shall act; all

which penalties shall be levied and recovered from such lessee or farmer, and applied in manner hereinafter directed. 3 G.4. c.126.

§ 59. In case any dispute, suit, or litigation shall arise, touching or in anywise relating to the tolls granted by any act, the person or persons appointed to collect the same, or any other person or persons acting under the authority of the trustees or commissioners, shall not be incompetent to give evidence in any such dispute, suit, or litigation, on account of his being appointed to collect such tolls. Collectors not to be incompetent to give evidence.

§ 71. It shall not hereafter be lawful for any trustees or commissioners to continue or appoint the person who has been or may be appointed to act as their clerk in the execution of any act or acts for repairing and maintaining any turnpike road, or the partner of any such clerk, to be or to hold the offices of clerk and treasurer for the purposes of such act or acts, or to continue or appoint the person who has been or may be appointed treasurer, or the partner of any such treasurer, to be the treasurer and clerk for the purposes of such act or acts; and if any person shall act in both the capacities of clerk and treasurer, or if any person being the partner of any such clerk shall act as treasurer, or being the partner of such treasurer, shall act as clerk in the execution of this or any other act, every person shall, for every such offence, forfeit the sum of 50*l.* to any person or persons who shall sue for the same, to be recovered, with full costs of suit, in any of H. M.'s courts of record at *Westminster*, by action of debt or on the case, or by bill, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance, shall be allowed. Office of treasurer and clerk to be kept separate. Penalty 50*l.*

§ 75. No person shall be capable of holding any place of profit under any trustees or commissioners of any turnpike road, who shall sell any wine, ale, spirituous liquors, or provisions by retail. Victuallers not to hold places of profit.

§ 76. The trustees and commissioners of every turnpike road shall and they are hereby required to take sufficient security from every treasurer to be appointed by them for the purposes of any act or acts of parliament for making, repairing, or maintaining any turnpike road, for the due and faithful execution of his office, before such treasurer shall enter upon his office; and if they shall so think proper, shall and may also take such security from any other officer to be appointed under or by virtue of this or such other act. *Vide* Form No. XVI. Treasurer to give security. Security may be taken from any other officer. (No. XVI.)

By stat. 4 *G.4. c.95.* § 47. All such officers as shall have been or shall be appointed by any trustees or commissioners of any turnpike road, shall from time to time, when thereunto required by the trustees or commissioners, deliver to such trustees or commissioners, or to such person or persons as they shall for that purpose appoint, true, exact, and perfect accounts in writing, under their respective hands, of all monies which they and every of them respectively shall have received to that time, by virtue of any act, and how much thereof hath been paid and disbursed, and for what purposes, together with the proper vouchers for such payments, and shall pay all such monies as shall remain in their or any of their hands to the said trustees or commissioners, or to such person or persons as they shall appoint to receive the same, and not otherwise, within such time as such trustees or commissioners shall limit or appoint; and if any such officer or person shall refuse or neglect 4 G.4. c.95. Officers of turnpike roads to account when required by trustees.

4 G.4. c.95.

Proceedings on neglect of officers to account.

to produce or deliver up such accounts, and the vouchers relating to the same, or shall refuse or neglect to pay the money due on such account within the time or in manner aforesaid, or if any such officer or person shall refuse or neglect to deliver up to the said trustees or commissioners, or to such person or persons as they shall appoint, within ten days after being thereunto required by the said trustees or commissioners, all the books, papers, or writings in his custody or power relating to the execution of any such act, then and in every or any of the said cases it shall be lawful for any one justice of the peace for the county, division, or riding in which such road, or any part thereof, shall be situate, upon complaint (No. XVIII.) made to him by or on behalf of the said trustees or commissioners; and such justice is hereby required, by warrant under his hand and seal, to summon (No. XVII.) such officer or officers, person or persons, to appear before him, and upon his, her, or their appearing, or not being to be found, to hear and determine the matter of such complaint in a summary way, and to settle the said account or accounts, if produced; and if upon confession of the officer or officers, person or persons, against whom any such complaint shall be made, or by the oath or oaths of any witness or witnesses (which oath such justice is hereby empowered and required to administer, without fee or reward); or upon inspection of the said accounts, if produced, it shall appear to such justice that any of the money which shall have been collected or received shall be in the hands of such officer or officers, person or persons, such justice may and he is hereby authorized and required, on non-payment thereof, by a warrant or warrants (No. XX.) under his hand and seal, to cause such money to be levied by distress and sale of the goods and chattels of such officer or officers, person or persons respectively; and if no goods and chattels can be found (No. XXI.) sufficient to answer and satisfy the said money, and the charges of distraining and selling the same, or if such officer or officers, or other person or persons, shall not appear before the said justice at the time and place by him appointed for that purpose, unless for some sufficient reason, or if appearing, shall refuse or neglect to give and deliver to such justice an account or accounts of all receipts and payments as aforesaid, or to produce and deliver up to the said justices the several vouchers and receipts relating to such accounts respectively, or the books, accounts, papers, and writings in his, her, or their custody or power relating to the execution of any act for making or repairing turnpike roads, or the said recited act or this act; then and in either of the cases aforesaid, such justice may, and he is hereby authorized and required, by warrant under his hand and seal (No. XXII.) to commit such officer or officers, or person or persons, to the common gaol or house of correction of the county in which such road shall be situate, there to remain without bail or mainprize, in case he or they shall be committed for non-payment of any money received by him or them, or in his or their hands, until he shall have accounted for and paid the full amount thereof, or compounded with the trustees or commissioners, and paid such composition in such manner as the said trustees or commissioners shall appoint (which composition the said trustees or commissioners are hereby empowered to make); or in case he or they shall be committed for not delivering any account books, papers, or writings as aforesaid,

until he or they shall have delivered up such books, papers, and writings as aforesaid, or made satisfaction in respect thereof to the said trustees or commissioners; provided that no person who shall be so committed for want of sufficient distress shall be detained in prison by virtue of this act for a longer space of time than six calendar months. 4 G.4. c.95.

By stat. 3 *G.* 4. *c.* 126. § 136. Every constable, headborough, or tithingman refusing or neglecting to put this act into execution, or to account for and deliver any forfeiture or penalty according to the directions of this act, and every surveyor of any turnpike road, and every toll-collector, and all other persons employed, or to be employed by any trustees or commissioners appointed or to be appointed for the repairing roads, who do or shall receive salaries or rewards, who shall wilfully neglect, for the space of one week after any offence being to their knowledge committed, to lay such information upon oath before one or more of H. M.'s justices of the peace for the limit wherein such offence was committed, as by this act is directed, shall, upon due information (No. XVIII.) made upon oath before one of H.M.'s justices of the peace for the said limit, forfeit for every such neglect the sum of *5l.*

3 G.4. c.126. Penalty on persons employed with salaries refusing to execute the act, *5l.*

(No. XVIII.)

§ V. Meetings and Proceedings of Trustees.

[3 G. 4. c. 126. § 69, 70. 72, 73, 74. 78, 79, 80.—4 G. 4. c. 35.—c. 95. § 39. 41, 42. 62.]

By stat. 4 G. 4. c. 35. After reciting that whereas it has happened that the trustees or commissioners appointed to carry into execution any act or acts of parliament have not been able to meet on the day appointed by such act or acts for carrying the same into execution, by reason that the day appointed for such meeting has been antecedent to the passing of such act or acts, whereby the intent of such act or acts hath been or may be frustrated: for remedy whereof, it is enacted that in all cases where the trustees or commissioners appointed by any act or acts of parliament have not been or shall not be able to meet on the day appointed for their first meeting by any such act or acts, by reason that the day appointed for such meeting has been or shall be antecedent to the passing of such act or acts, it shall and may be lawful for three or more of the said trustees or commissioners appointed to execute such act or acts to meet at the place appointed by such act or acts for the first meeting of such trustees or commissioners, on the fourteenth day after the passing of such act or acts, or of this act; and every such meeting shall be as good, valid, and effectual as if such trustees or commissioners had met in pursuance of the act or acts of parliament which they are appointed to carry into execution.

4 G.4. c.35. Where trustees or commissioners cannot meet on the day appointed by the act for their first meeting, the day being antecedent to the passing thereof, any three of such trustees, &c. may meet on the fourteenth day after the passing of such act.

By stat. 4 G. 4. c. 95. § 39. The trustees or commissioners for executing any act for making or maintaining any turnpike roads shall and may from time to time meet at such time and place on or near their respective roads as to them shall seem convenient, and may adjourn themselves to meet at any place or places, and at such time or times, as the said trustees or commissioners or the major part of them present at any meeting shall appoint; and at all their several meetings the trustees or commissioners shall pay and defray their own expences, except any sum not ex-

4 G.4. c.95. Regulations as to meetings of trustees.

4 G.4. c.95. ceeding ten shillings *per diem* for the use of the room wherein they shall meet; and all orders and determinations of the trustees or commissioners in the execution of any such act shall be made at meetings to be held in pursuance thereof, or of the said recited act and this act, and not otherwise (except in the cases otherwise particularly provided for by the said recited act or any such act for making or repairing turnpike roads); and no order or determination shall be made unless the major part of the trustees or commissioners present shall concur therein; and all acts, orders, and proceedings relating to any such act, or the said recited act and this act, which are directed to be had, made, done, or exercised by or before the said trustees or commissioners, and all the powers and authorities vested in them generally, shall and may be had, made, done, and exercised by the major part of the trustees or commissioners who shall be present at the respective meetings to be held by virtue of any such act or this act, the whole number present not being less than three (except in such cases where any other number is by any local act, or the said recited act or this act, named for any particular or special purpose); and all acts, orders, or proceedings had, made, or done by or before such three trustees or commissioners shall have the same force and effect, and be binding and conclusive on all persons, and to all intents and purposes whatsoever, as fully and effectually as if the same were had, made, done, or executed by or before all the said trustees or commissioners; and a chairman shall and may in the first place be appointed at every meeting to be held by virtue and for the purposes of any such local act, or the said recited act, and this act, who in case of an equal number of votes (including the chairman's vote) shall have the casting or decisive vote; and no order or determination at any meeting of the said trustees or commissioners, once made, agreed upon, or entered into, shall be revoked or altered at any subsequent meeting, unless notice of the intention to make such revocation or alteration shall have been given by three or more trustees or commissioners, by writing under their hands, to the clerk to the said trustees or commissioners, at a previous meeting holden for the same road, and entered in the book of proceedings of such meeting, and unless notice signed by any two or more trustees or commissioners shall have been affixed on all the turnpike gates then erected upon such road, twenty one days at least before such meeting, nor unless such revocation or alteration shall be agreed to be made by a greater number of trustees or commissioners than concurred in the making of any such order or determination: Provided always, that nothing herein contained, prohibiting or restraining trustees from expending more than ten shillings *per diem* for the use of the room wherein they shall meet, shall extend to the trustees or commissioners of any road within five miles of the *Royal Exchange* in *London*; but such last-mentioned trustees or commissioners may expend any sum not exceeding twenty shillings for the use of such room.

How meetings in emergencies shall be held. § 41. If at any time it shall be thought necessary, for the better execution of any act of parliament for making or maintaining any turnpike road, that the trustees or commissioners of such road should meet before the time to which any meeting may be adjourned, it shall and may be lawful for any two or more of such

trustees or commissioners (or for the clerk to the said trustees or commissioners, by an order in writing, signed by any two or more of them) to give notice of such earlier meeting by advertisement in some newspaper circulated in the neighbourhood of such road, and affixed on all the turnpike gates then standing on such road, in which notice shall be expressed the time, place, and purpose of such earlier meeting (such time not being less than fourteen days after publication of the said notice); and all the orders and determinations of the trustees or commissioners at all such meetings shall be as valid as if the same had been done at any other meeting of trustees or commissioners held by virtue of the said recited act or this act, or the act under and by virtue of which they shall act as trustees or commissioners: Provided always, that no other business than what shall be specified in such notice shall be transacted at any such meeting. 4 G.4.c.95.

By stat. 3 G. 4. c. 126. § 69. All trustees and commissioners of every turnpike road or roads shall, and they are hereby required to hold a general meeting of the trust for which they shall respectively act, on a day to be by them, or any three or more of them, appointed, in the months of *April*, *September*, or *October*; of which meeting twenty-one days' notice shall be given, by inserting the same in some newspaper or newspapers usually circulating in the county or counties in which the road or roads, in respect whereof such meeting shall be held, lie or are situated, which said meeting shall be called or known as "*The General Annual Meeting of the Trustees or Commissioners*;" and at such meeting the trustees or commissioners assembled shall elect a chairman for the purposes thereof, and shall also audit their accounts, and report the state of the road or roads under their care and superintendance. 3 G.4. c.126. General annual meetings to be held.

§ 70. Where a sufficient number of the trustees or commissioners of any turnpike road shall not meet on the day appointed by any such act or acts for their first meeting, or shall not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, by which means, or by some or one of them, the intent of the said act or acts may be frustrated, in all or either of the said cases it shall be lawful for so many of the said trustees or commissioners as shall meet, or the major part of them, or in case no such trustee or commissioner shall be present, for their clerk or clerks to cause notice in writing to be affixed on all the turnpike gates which shall be then erected on the said respective roads, or if no turnpike gate shall then be erected, to cause the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest to which the roads directed to be repaired do lie; and also in some public newspaper circulated in the county in which the road shall be situate, at least 10 days before the intended meeting, appointing such trustees or commissioners to meet at such place where the preceding meeting was appointed to have been held, or at the place directed for the first meeting of such trustees or commissioners, if no such preceding meeting shall have been held; and the said trustees or commissioners, when met in pursuance of such notice shall, and they are hereby required to proceed and carry such act or acts into execution, in the same and in as ample and full a manner, If a sufficient number of trustees or commissioners do not attend, another meeting shall be appointed, of which ten days' notice shall be given.

to all intents and purposes, as they might or could have done if no such neglect had happened.

4 G.4. c.95. Where a local act has fixed a different time for the annual meeting than that mentioned in recited act, it may be held on that day.

By stat. 4 *G.* 4. *c.* 95. § 42. After reciting that whereas by stat. 3 *G.* 4. *c.* 126., all trustees and commissioners of every turnpike road or roads are required to hold a general meeting of the trust for which they shall respectively act, on a day to be by them, or any three or more of them, appointed in the months of *April*, *September*, and *October;* it is enacted, That where, in and by any act of parliament, a general annual meeting of the trustees acting in execution of such act, shall be appointed to be held at any other time of the year than in the said months of *April*, *September*, or *October*, and the said trustees shall have held such meetings under the authority of such act, it shall and may be lawful for such trustees to continue to hold the said general annual meetings at the time mentioned and directed in the act, under and by virtue of which they shall be appointed, instead of in the said months of *April*, *September*, or *October;* any thing in the said recited act contained to the contrary notwithstanding.

3 G.4. c.126. Orders and proceedings to be entered in books which shall be open for inspection.

By stat. 3 *G.* 4. *c.* 126. § 72. All orders and proceedings of the trustees or commissioners of every turnpike road, together with the names of the trustees or commissioners present at every meeting, shall be entered in a book or books to be kept by the clerk to the said trustees or commissioners for that purpose, and be signed by the chairman of the meeting or meetings at which such orders or proceedings shall be from time to time made or had; and such book or books shall be open at all seasonable times to the inspection of any of the trustees or commissioners without fee or reward; and such orders and proceedings so entered and signed by the chairman of such meeting or meetings, shall be deemed and taken to be original orders and proceedings; which said book or books, as well as the book or books in which the oath or affirmation directed to be taken by the said trustees or commissioners shall be entered; and also the book or books directed to be kept for registering mortgages and assignments, and all entries in such books respectively, shall and may be read in evidence in all courts whatsoever, in all cases of appeal, and in all prosecutions, suits and actions whatsoever.

Books to be evidence.

4 G.4. c.95. Books used under former acts to be evidence.

By stat. 4 *G.* 4. *c.* 95. § 62. All and every book and books containing the accounts and proceedings of the trustees or commissioners for executing any act for making or maintaining any turnpike road, or containing any orders or agreements made or entered into by them, such book or books being kept and signed in manner directed by such act, or by the said recited act and this act directed, shall and may be given in evidence in all cases of appeal, and in all prosecutions, suits, and actions whatsoever.

3 G.4. c.126. Books of account to be kept, and to be open to the inspection of trustees and creditors.

By stat. 3 *G.* 4. *c.* 126. § 73. The trustees and commissioners of every turnpike road shall, and they are hereby required from time to time, and at all times, to order and direct a book or books to be provided and kept by their clerk for the time being; in which book or books such clerk shall enter, or cause to be entered, true and regular accounts of all sums of money received, paid, laid out, and expended for or on account of the road for which such clerk shall act, and of the several articles, matters, and things for which such sums of money shall have been disbursed, laid out, and paid; and such book or books shall, at all seasonable times, be

open to the inspection of the said trustees or commissioners, or any creditor or creditors on the tolls collected and taken on the road to which such books relate, without fee or reward; and the said trustees, or commissioners and creditors, or any of them, shall or may take copies of or extracts from the said book or books, or any part or parts thereof, without paying any thing for the same; and the said book or books shall be produced by the said clerk at all meetings of the said trustees or commissioners; and in case any clerk shall refuse to permit, or shall not permit any of the said trustees or commissioners, or any such creditor, to inspect any such book or books, or to take such copies or extracts as aforesaid; or in case such clerk shall refuse or neglect to produce such book or books at any meeting of the said trustees or commissioners, such clerk shall forfeit any sum of money not exceeding *5l.*, to be levied and applied in the same manner as other penalties are hereby directed to be levied and applied.

3 G.4. c.126.

Penalty not exceeding *5l.* on clerk for refusing inspection, &c.

§ 74. The trustees and commissioners of every turnpike road may sue and be sued in the name or names of any one of such trustees or commissioners, or of their clerk or clerks for the time being; and no action or suit to be brought or commenced by or against any trustees or commissioners of any turnpike road by virtue of this or any other act or acts of parliament, in the name or names of any one of such trustees or commissioners, or their clerk or clerks, shall abate or be discontinued by the death or removal of such trustee, commissioner, clerk, or clerks, or any of them, or by the act of such trustee, commissioner, clerk or clerks, or any of them, without the consent of the said trustees or commissioners; but any one of such trustees or commissioners, or of the clerk or clerks for the time being, to the said trustees or commissioners, shall always be deemed to be the plaintiff or plaintiffs, defendant or defendants (as the case may be), in every such action or suit: provided that every such trustee, commissioner, clerk or clerks, shall be reimbursed and paid out of the monies belonging to the turnpike road, for which he or they shall act; all such costs, charges, and expences as he or they shall be put unto, or become chargeable with, or liable to, by reason of his or their being so made plaintiff or plaintiffs, defendant or defendants. (*a*)

Trustees may sue and be sued in the name of their clerk, &c.

§ 78. The trustees or commissioners of every turnpike road shall, and they are hereby required at their general annual meeting in each year, to examine, audit, and settle the accounts of

For auditing the accounts of treasurers,

(*a*) A turnpike act directed, "That if any person had cause of action against the trustees, the action should be brought against the treasurer;" It was held, that the action against the treasurer was substituted only for such action as might be maintained against the whole body of trustees, and that an action would not lie against him for the act of five, although they formed a quorum. *Everett* v. *Cooch*, 7 *Taunt.* 1. By a turnpike act trustees were appointed, with an authority to cut drains in lands adjoining the road, making reasonable satisfaction to the owners; a drain was cut by an order signed by a competent number of trustees, and according to the plan of a surveyor, in land adjoining the plaintiffs, by which the latter was overflowed; an action for the damage was brought against one trustee only, who acted and signed the order as chairman; it was decided, that, supposing the act to have been maintainable, it was well brought against the defendant alone. *Sutton* v. *Clarke*, 1 *Marsh*, 429. 6 *Taunt.* 29 *S. C.* See *Boulton* v. *Crowther*, 2 *B. & C.* 703. *post.*

3 G.4. c.126.

clerks, and surveyors, at the general annual meeting.

the respective treasurers, clerks, and surveyors appointed by them, and to require such treasurers, clerks, and surveyors, to produce their books, accounts, papers, and vouchers, and to examine into the revenues and debts, distinguishing bond from simple contract debts, of the several roads for which they shall act as treasurer, clerk, or surveyor; and when the accounts of the said several treasurers, clerks, and surveyors shall be settled and allowed by the trustees or commissioners present at such meeting, the same shall be signed by the chairman of such meeting; and if any treasurer, clerk, or surveyor shall refuse or neglect to produce his accounts, or any book, paper, or voucher required to be produced by him, such treasurer, clerk, or surveyor shall be dealt with according to the provisions hereinbefore contained with regard to officers refusing to account or deliver up books or papers, or pay over money in their hands; and when and as soon as the said accounts of the said respective treasurers, clerks, and surveyors shall be audited, allowed, and signed, the clerk to the trustees or commissioners holding such meeting shall forthwith make out a statement of the debts, revenues, and expenditure received or incurred on account of the trust for which the meeting shall be held, in the form (No.XXIV.) contained in the schedule to this act annexed; which said statement shall be submitted to the trustees or commissioners assembled at such meeting, and when approved by the majority of them shall be signed by the chairman of the said meeting; and the said statement, being so approved and signed, the said clerk shall, within 30 days thereafter, transmit the same to the clerk of the peace of the county in which the road, or the major part thereof, to which the said statement relates, shall lie; and if any clerk shall refuse or neglect to make out such statement as aforesaid, or to transmit the same within the time hereinbefore mentioned, every clerk so offending shall for such offence forfeit the sum of 50*l*., to be recovered as hereinafter directed.

Treasurer, &c. neglecting to produce accounts, &c. how to be dealt with.

Statement of the revenue and expenditure to be made out according to the Form (No. XXIV.) in schedule annexed, and being approved shall be transmitted to the clerk of the peace.

Penalty, 50*l*.

Clerk of the peace to register such statements, and produce them to the quarter sessions.

§ 79. Enacts, that the clerk of the peace of every county to whom such statements shall be transmitted, shall, on receiving such statements, cause the same to be produced to the justices assembled at the quarter sessions to be held next after the receipt thereof, and also to be registered and kept amongst the records of the quarter sessions of the county for which such clerk of the peace shall act; and the said statements so to be transmitted to the said respective clerks of the peace, shall, when registered, be open to the inspection of all and every person and persons whatsoever, who may take extracts therefrom or copies thereof, paying to the clerk of the peace in whose custody the same shall be, the sum of 5*s*. for each inspection, and the sum of sixpence for every 72 words of each extract or copy taken.

Fee for inspection and copy.

Statements to be printed and sent to trustees.

§ 80. The said trustees or commissioners shall, immediately after such accounts and statements have been examined, audited, and signed, cause a sufficient number of copies of such statements to be printed, and direct their clerk to transmit a copy thereof to each acting trustee or commissioner, having duly qualified himself to act as such trustee or commissioner of such road.

§ VI. Payment of Subscriptions enforced.

[3 G. 4. c. 126. § 82.]

By stat. 3 *G.* 4. *c.* 126. § 82. It is enacted, that if any person or persons shall agree to advance any sum or sums of money to be employed in the making or repairing of any turnpike road or highway intended to be made turnpike, and shall subscribe his, her, or their name or names to any writing for that purpose, every such person shall be liable to pay every such sum or sums of money so subscribed, according to the purport of such writing; and in default of payment thereof within 21 days after the same shall become payable according to the purport of such writing, and shall be demanded by the person to whom the same is made payable by such writing, or if no person be named therein for that purpose, by the treasurer of such turnpike or intended turnpike road, it shall and may be lawful for every such treasurer or other person to sue for and recover the same in any of H. M.'s courts of record, by action of debt or on the case, or by bill, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance shall be allowed.

3 G. 4. c. 126. Enforcing the payment of money subscribed. See Form (No. XIV.)

§ VII. Mortgage of Tolls.

[3 G. 4. c. 126. § 47, 48, 49. 81. — 4 G. 4. c. 95. § 60, 61.]

By stat. 3 *G.* 4. *c.* 126. § 47. It is enacted, that all and every mortgagee and mortgagees that hath or have taken or been in possession, or shall hereafter take or be in possession of any toll gate or bar set up or erected on any turnpike road, or of any lands or tenements, the rents and profits whereof are appropriated to the repairs of any part of any turnpike road, shall, within 21 days after he, she, or they shall have received notice in writing from the trustees or commissioners of such turnpike road, render an exact account in writing to such trustees or commissioners, or to such person as they shall appoint, of all monies received by such mortgagee or mortgagees, or by any other person or persons for his, her, or their use and benefit, or by his, her, or their authority, at such toll gate or bar or otherwise, and what he, she, or they have expended in keeping or repairing the same; and in case he, she, or they shall neglect to render such account when required as aforesaid, he, she, or they shall severally forfeit to the said trustees or commissioners, for every refusal, neglect, or omission, the sum of *50l.*, to be applied to the use of the road on which such toll gate or bar shall be erected.

3 G. 4. c. 126. Mortgagees in possession of the tolls to account to the trustees.

Penalty, 50l.

§ 48. If any such mortgagee or mortgagees shall keep possession of any toll gate or bar by him, her, or themselves, or by any other person or persons on his, her, or their behalf, and receive the tolls or duties thereat, or of any such rents and profits as aforesaid, after such mortgagee or mortgagees shall have received the full sum or sums of money due on their respective mortgage or mortgages, and the interest thereof with costs, such mortgagee or mortgagees shall forfeit, as a penalty, to the trustees or commissioners, double the sum or sums of money he, she, or they shall have received, over and above the sum or sums of

If mortgagee keeps possession after he has received the money due, he shall forfeit double the sum and treble costs.

3 G.4. c.126. money due as aforesaid, with treble costs of suit, to be recovered by the treasurer or clerk to such trustees or commissioners, by action of debt, bill, plaint, or information, in any of H. M.'s courts of record, which when recovered shall be applied to the use of the respective road or roads on which such toll gate or bar shall be placed, or such rents appropriated.

An action of ejectment may be supported by one mortgagee.

§ 49. If any mortgagee or mortgagees of any tolls, toll gates, bars, chains, toll houses, and buildings, on any turnpike road, shall seek to obtain the possession of the said toll gates, bars, chains, toll houses and buildings, in order to pay himself, herself, or themselves the principal money and interest, or any part thereof, due to him, her, or them, it shall be competent for him, her or them, as lessor or lessors of the plaintiff, and upon his, her, or their demise only, and without uniting in such demise the other mortgagees of the said tolls and premises, to obtain such possession; but such person or persons who shall obtain the possession thereof, shall not apply the tolls which may consequently be received by him, her, or them, to his, her, or their own exclusive use and benefit, but to and for the use and benefit of all the mortgagees of the said premises, *pari passu*, and in proportion to the several sums which may be due to them as such mortgagees.

Power to borrow money.

§ 81. It shall be lawful for the trustees or commissioners of any turnpike road, to borrow and take up at interest, on the credit of the tolls arising on such road, such sum or sums of money as they shall from time to time think proper, and to demise and mortgage the tolls on such road, or any part or parts thereof, and the turnpikes and toll houses for collecting the same, (the costs and charges of which mortgages shall be paid out of the tolls) as a security to any person or persons or their trustees who shall advance such sum or sums of money; which mortgages shall be in the words or to the effect following; (that is to say)

Form of mortgage.

BY virtue of an act passed in the ——— year of the reign of ———, intituled [here set forth the title of this act], *we, whose hands and seals are hereunto subscribed and set, being ——— of the trustees* [or, *commissioners*] *for putting into execution an act, passed in the ——— year of the reign of ———, intituled,* [here set forth the title of the act under which the trustees or commissioners borrowing the money and granting the mortgage shall act,] *in consideration of the sum of ——— l. sterling, advanced and paid by* A. B. *of ———, to the treasurer of the said trustees* [or, *commissioners*], *do hereby grant and assign unto the said* A. B. *and his executors, administrators, and assigns, such proportion of the tolls arising and to arise on the said turnpike road, and the toll gates and toll houses erected or to be erected for collecting the same, as the said sum of ——— l. doth or shall bear to the whole sum now or hereafter to become due and owing on the security thereof: to have, hold, receive, and take the said proportion of the said tolls, toll gates, toll houses and premises, with the appurtenances, unto the said* A. B. *and his executors, administrators, and assigns, for and during the residue of the term for which the said tolls are granted by the said last mentioned act, unless the said sum of ——— l. with interest after the rate of ——— l.* per centum per annum, *shall be sooner repaid and satisfied. Given under our hands this ——— day of ———, A. D.* 18—.

And copies of all such mortgages shall be entered in a book or books to be kept for that purpose by the clerk or treasurer to the said trustees or commissioners, for which entry such clerk shall be paid the sum of *5s.* and no more, out of the tolls payable on such road, and which said book or books shall and may at all seasonable times be perused and inspected without fee or reward; and it shall be lawful for all persons respectively, to whom any mortgage shall be made as aforesaid, or who shall be from time to time entitled to the money thereby secured, to assign or transfer his, her, or their right, title, and interest in and to such mortgage, and the principal money and interest thereby secured to any other person or persons whomsoever; which assignment or transfer may be made in the following words, or words to the like effect, to be indorsed on such mortgage security, or to be under-written or thereunto annexed, and signed in the presence of and attested by one or more credible witness or witnesses; (that is to say), 3 G.4. c.126. Mortgages may be assigned.

I A. B. [or, *I,* C. D., *assignee, executor or administrator of* A. B., as the case may happen,] *do hereby assign and transfer this mortgage security, with all my right and title to the principal money thereby secured, and all interest now due and hereafter to grow due upon the same, unto* E. F., *his or her executors, administrators, and assigns. Dated this* ——— *day of* ———, *one thousand eight hundred and* ———. Form of assignment.

Witness, G. H. (*Signed*) A. B. [or C. D.]

Which transfer shall be produced and notified to the clerk or treasurer of the said trustees or commissioners, within two calendar months next after the day of the date thereof, who shall enter the same in the said book or books, for which entry the said clerk or treasurer shall be paid the sum of *5s.* and no more; and such transfer shall then entitle such assignee, his executors, administrators, and assigns, to the full benefit of such mortgage security; and every such assignee may, in like manner, assign or transfer the same, and so *toties quoties*; and it shall not be in the power of any person or persons (except the person or persons to whom the same shall be last transferred, his, her, or their respective executors or administrators,) to release, discharge, or make void the original mortgage security, or the monies due thereon, or any part thereof; and all persons to whom any such mortgage or transfer shall be made as aforesaid shall, in proportion to the sum or sums of money thereby secured, be creditors on the tolls by such act granted, and on the said toll gates and toll houses, in equal degree one with another, or in such order as shall be agreed upon and stipulated by the said trustees or commissioners at the time of the advance of their respective shares. See *Doe ex dem. Banks* v. *Booth,* 2 *Bos. & Pull.* 219.

By stat. 4 *G.4. c.*95. § 60. In case the trustees or commissioners of any turnpike road shall at any time or times be desirous of paying off any portion of the principal monies due and owing upon the credit of such road, where all the interest due thereon shall have been duly paid or otherwise satisfied, it shall and may be lawful for them, at any meeting to be holden according to the directions of the said recited act or this act, or of the act or acts in execution of which they shall act, (notice of such intended meeting and of the purposes thereof being first given at least 28 4 G.4. c.95. Instead of paying off creditors rateably, trustees may do so by lot.

4 G.4. c. 95. days preceding the same, by advertisement in some newspaper printed in or usually circulated in the neighbourhood of the said road,) if they shall think fit, instead of paying the same rateably amongst all the creditors, to determine by lot to which of such creditors the whole or any portion thereof shall be so paid, and to pay the same to such creditor or creditors only, or to any of the creditors, with the consent of all the other creditors.

Trustees not personally liable for mortgages.

§ 61. Provided always, that the trustees or commissioners for making or maintaining any turnpike road shall not be personally subject to or liable to be charged with the payment of any sum or sums of money by reason of their having signed or executed any mortgage, or assignment by way of mortgage, or other security to be made by virtue or in pursuance of any act for making or maintaining any turnpike road: Provided also, that in case any action, suit, or prosecution shall be brought or commenced against any such trustee or commissioner, for any thing done by virtue or in pursuance of stat. 3 *G.* 4. *c.* 126., or this act, or any such act for making or maintaining any turnpike road, all the costs, charges, and expences of defending such action, suit, or prosecution, or which such trustee or commissioner shall incur in consequence thereof, shall be defrayed out of the tolls arising on the turnpike road for which such trustee or commissioner shall act.

§ VIII. Powers to make and improve Roads.

[3 G. 4. c. 126. § 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96. 4 G. 4. c. 95. § 55. 63. 65, 66. 68, 78.]

3 G.4. c. 126. **Powers for making and improving the roads.**

By stat. 3 *G.* 4. c. 126. § 83. It is enacted, "that it shall be lawful for the trustees or commissioners of every turnpike road, and they are hereby fully authorised and empowered, from time to time, to make, divert, shorten, vary, alter, and improve the course or path of any of the several and respective roads under their care and management, or of any part or parts thereof, and to divert, shorten, vary, alter, and improve the course or path of any of the said several and respective roads, through or over any commons or waste grounds, or uncultivated lands, without making satisfaction for the same, and also through or over any private lands, tenements, or hereditaments, tendering and making satisfaction to the owners thereof, and persons interested therein, for the damage they shall sustain thereby; and it shall and may be lawful for the said trustees or commissioners, and for their surveyor or surveyors and workmen, with or without carriages or cattle, from time to time, to enter upon any such commons or waste grounds, or uncultivated lands, private lands, tenements, or hereditaments as aforesaid, through or over which the said road, or the widenings and alterations thereof, pass, or are intended to pass, and to stake out and make the same in such manner as the said trustees or commissioners, shall think necessary or proper, without being thereby subject or liable to be deemed a trespasser or trespassers, or to any fine, penalty, or forfeiture for entering or continuing upon any part or parts of such lands, tenements, and hereditaments respectively, for any of the purposes aforesaid."

Boulton v. *Crowther*, *E.* 5 *G.* 4. 2 *B.* & *C.* 703. By the general turnpike act, the trustees of roads are authorised to divert, shorten, alter, or improve the course or path of any of

the roads under their management, and divert, shorten, vary, alter, and improve the course or path of any roads through or over any commons, or waste grounds, or uncultivated lands without making satisfaction for the same; and through or over any private lands tendering, or making satisfaction to the owners thereof and persons interested therein for the damage sustained thereby. The court of K. B. held, that under this clause, the trustees are authorised to lower hills and raise hollows, and that the trustees are not liable to an action for a consequential injury resulting from an act which they are authorised to do. 3 G.4. c.126.

§ 84. It shall be lawful for the trustees or commissioners of any turnpike road to treat, contract, and agree with the owners of and persons interested in any lands, tenements, hereditaments, and premises, with their appurtenances, which they shall deem necessary to purchase for the purpose of widening, diverting, altering, and improving such road, for the purchase thereof, and for the loss or damage such owners or persons may otherwise sustain; and it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees in trust, committees, executors, administrators, and all other persons whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of the person or persons entitled in reversion, remainder, or expectancy after them, and for and on behalf of their cestuique trusts, whether femes covert, infants, or issue unborn, lunatics, idiots, or other person or persons whomsoever, and to and for all femes covert who are or shall be seised of or interested in their own right, and to and for all and every person and persons whomsoever who are or shall be possessed of or interested in any such lands, tenements, hereditaments, or premises, or who shall sustain any damage as aforesaid, to contract with the said trustees or commissioners for the sale thereof, or for the satisfaction to be made for the same, or for such damages as aforesaid; and by conveyance, lease, and release, or bargain and sale, to sell and convey unto the said trustees or commissioners all or any such lands, tenements, hereditaments, or premises, or any part thereof, for the purposes aforesaid; and all contracts, sales, and conveyances which shall be so made shall be good, valid, and effectual to all intents and purposes, without fine or recovery, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, and interests whatsoever, any law, statute, usage, custom, or other matter to the contrary notwithstanding; and all such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, and all other persons, shall be and are hereby indemnified for what they or any of them shall do by virtue or in pursuance of this act.

Lands may be purchased for improving the road.

Bodies politic, &c. and incapacitated persons, empowered to sell.

Contracts binding.

§ 85. If any such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, or any other person or persons interested in any such lands, tenements, hereditaments, or premises, or sustaining any damage as aforesaid, upon notice (a) to him, her, or them given or left in

When persons interested neglect or refuse to treat, the value may be ascertained by a jury.

(a) See R. v. Bagshaw, 7 T. R. 364.

3 G.4. c.126.

writing at the dwelling house or dwelling houses, place or places of abode of such person or persons, or of the principal officer or officers of any such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or at the house of the tenant in possession of any such lands, tenements, hereditaments, or premises, shall for the space of 30 days next after such notice given or left as aforesaid, neglect or refuse to treat, or shall not agree in the premises, or by reason of absence shall be prevented from treating, then and in every such case the said trustees or commissioners shall cause such damage, value, or recompence to be inquired into and ascertained by a jury of 12 indifferent men of the county, riding, or place wherein such lands, tenements, hereditaments, or premises do lie; and in order thereto, the said trustees or commissioners are hereby empowered and required from time to time, as occasion shall require, to summon and call before such jury, and examine upon oath, all and every person and persons whomsoever who shall be thought necessary and proper to be examined concerning the premises (which oath the said trustees or commissioners, or any or either of them, are and is hereby empowered to administer); and such trustees or commissioners shall, by ordering a view or otherwise, use all lawful ways and means, as well for their own as for the said jury's information in the premises; and after the said jury shall have inquired of and assessed such damage and recompence, they the said trustees or commissioners shall thereupon order the sum or sums of money so assessed by the said jury to be paid to the said owners or other persons interested, according to the verdict or inquisition of such jury; and such verdict or inquisition, and judgment, order, and determination thereon, shall be final, binding, and conclusive to all intents and purposes against all parties and persons whomsoever claiming or to claim any estate in possession, reversion, or otherwise, their heirs and successors, as well absent as present, infants, femes covert, idiots, lunatics, and persons under any other disability whatsoever, bodies politic, corporate or collegiate, corporations aggregate or sole, tenants for life or in tail, as well as all and every person and persons whomsoever (*a*); and for summoning and returning such juries, the said trustees or commissioners are hereby empowered to issue their warrant or warrants in writing to the sheriff of the county wherein such lands, tenements, hereditaments, or premises do lie, commanding him to impannel, summon, and return an indifferent jury of 24 persons, qualified to serve upon juries, to appear before such trustees or commissioners at such time and place as in such warrant or warrants shall be appointed; and such sheriff, or his deputy or deputies, is and are hereby required to impannel, summon, and return such number of persons accordingly; and out of the persons so impannelled, summoned, and returned, or out of such of them as shall appear upon such summons, the said trustees or commissioners shall and are hereby empowered and required to swear or cause to be sworn 12 men, who shall be a jury for the purposes aforesaid; and in default of a sufficient number of jurymen, the said sheriff, or his deputy or deputies, shall return other honest and indifferent men of the standers-by, or that can be speedily procured to attend that service, to the number of 12; and all persons concerned shall have their lawful challenges against the said jurymen when they come to be sworn, but shall

(*a*) See R. v. Sheppard, ante.

not challenge the array; and the said trustees or commissioners acting in the premises shall have power, from time to time, to impose any reasonable fine or fines upon such sheriff, his deputy or deputies, bailiff or bailiffs, agent or agents, making default in the premises, and on any of the persons that shall be summoned and returned on such jury, and who, without sufficient excuse, shall not appear, or appearing shall refuse to be sworn on the said jury, or being sworn shall refuse to give or shall not give their verdict, or in any other manner wilfully neglect their duty therein, contrary to the true intent and meaning of this act, and on any of the persons who, being required to give evidence before the said jury, shall, without sufficient excuse, refuse or neglect to appear, or appearing shall refuse to be sworn and examined or to give evidence, so that no one fine be more than 10*l.* on any such sheriff, deputy, bailiff, or agent, nor more than 5*l.* on any other person, for one offence.

3 G.4. c.126. Fines may be imposed on sheriffs, &c. making default in the premises.

§ 86. Every sum of money or recompence to be agreed for or assessed as aforesaid, shall be paid out of any monies in the hands of the said trustees or commissioners, or out of the tolls granted by the act for making and repairing such turnpike road, or out of the monies to be borrowed on the credit thereof, to the party or parties, or person or persons respectively entitled thereto, or to their agents, or into the bank of *England*, in manner by this act directed (as the case may be); and upon such payment to such parties or persons, or their agents, or into the bank of *England*, and after 30 days' notice thereof given to such parties or persons, or to their agents, or left at their respective usual places of abode, or with the tenant or tenants in possession of such lands, tenements, hereditaments, and premises, then such lands, tenements, hereditaments, and premises respectively shall be vested in such trustees or commissioners, and shall and may be taken and used for the purposes of such act; and such lands, and the site of such lands, tenements, hereditaments, and premises, shall be laid into and made part of the road, in such manner as the said trustees or commissioners shall direct, and shall be repaired, and kept in repair, by such trustees or commissioners, by the same ways and means as any other part of the road under their management is or ought to be kept in repair; and all parties and persons whomsoever shall be divested of all right and title to such lands, tenements, and hereditaments; and after such new road shall be completed, the lands or grounds constituting any former roads or road, or so much and such part or parts thereof as in the judgment of the said trustees or commissioners may thereby become useless or unnecessary, or shall or may be stopped up and discontinued as public highways, (unless leading over some moor, heath, common, uncultivated land, or waste ground, or to some church, mill, village, town or place, lands or tenements, to which such new road or roads doth not or do not immediately lead, and which may therefore be deemed proper to be kept open either as a public or private way or ways, for the use of any inhabitant at large, or any individual or individuals,) and shall be vested in, and shall and may be sold and conveyed by the said trustees or commissioners, in the manner herein mentioned, for the best price that can be gotten for the same, and the money arising by such sale shall be applied for the purposes of the act for repairing and

Money assessed for lands, &c. to be paid by the trustees and tendered to the parties entitled thereto, or paid into the bank, upon which the premises shall vest in the trustees.

After new road is completed, the old road may be sold.

3 G.4. c.126. Conveyances executed by the trustees, and enrolled in the office of the clerk of the peace, to be valid.

maintaining such turnpike road; and all conveyances, being executed by the said trustees or commissioners, and enrolled in the office of the clerk of the peace for the county, city, or place wherein such road shall be situate, shall be good and effectual in the law to all intents and purposes whatsoever; or it shall be lawful for the said trustees or commissioners, instead of making such sale as aforesaid, to give up to the owners or proprietors of any adjoining lands, tenements, or hereditaments, whose building, land, or ground shall be had or taken for the purposes of this act, any part or parts of the present or old roads in lieu of and in exchange for the same, in such way and manner as such trustees or commissioners, and owners' or proprietors, shall agree upon and think fit. (*a*)

4 G.4. c.95. Sale of unnecessary tenements.

By stat. 4 *G.* 4. *c.* 95. § 63. In case the trustees or commissioners for making or maintaining any turnpike road shall become possessed of any tenements or hereditaments which are useless or unnecessary for the purposes of such road, it shall be lawful for the said trustees or commissioners to sell and dispose of the same, in such and the same manner as by the said recited act they are authorised and empowered to do, in the cases of any land or ground not wanted for the purposes of such road.

3 G.4. c 126. How expences of jury and witnesses are to be borne.

By stat. 3 *G.* 4. *c.* 126. § 87. In case any jury or juries to be summoned and sworn pursuant to the directions and authority of this act shall give in and deliver a verdict or assessment for more money as a recompence or satisfaction for the right, interest, or property, of any person or persons in any such lands, tenements, hereditaments, or premises, or for any loss or damage to be by him, her, or them sustained, than what shall have been agreed to and offered by such trustees or commissioners before the summoning or returning the said jury or juries, as a recompence or satisfaction for any such right, interest, or property, or for any loss or damage as aforesaid, then and in such case the costs and expences of summoning and maintaining the said jury and witnesses, and all other expences attending the hearing and determining such difference, shall be borne and paid by the treasurer to the trustees or commissioners, out of any money which shall then be in his hands, or out of any monies to be received by virtue of the act for repairing and maintaining such turnpike road, such costs and expences to be settled and ascertained by some justice of the peace for the county or place wherein the dispute shall have arisen, not interested in the matter in question, who is hereby authorised and empowered to settle and determine the same, and to make an order on the treasurer of the trustees or commissioners liable thereto for the payment thereof; but if any such jury or juries so summoned and sworn as aforesaid shall give in and deliver a verdict or assessment for no more or for less money than shall have been agreed to and offered by the trustees or commissioners before the summoning and returning of the said jury or juries, as a recompence and satisfaction for any such right, interest, or property in any such lands, tenements, hereditaments, or premises,

(*a*) Unless vested in them by the terms of the act appointing them, the property in the soil of a turnpike road is not in the trustees, but remains in the persons who were entitled to it before the act passed. — The trustees have only the control of the highway. Per Ld. *Kenyon* C. J. *Davidson* v. *Gill*, 1 *East*, 64.

or losses or damages as aforesaid, then the costs and expences of summoning and maintaining the said jury and witnesses, and all other expences as aforesaid, shall be borne and paid by the person or persons with whom such trustees or commissioners shall have such controversy or dispute; which said costs and expences having been ascertained and settled by some justice of the peace for the county, riding, or place wherein the cause of dispute shall arise, not interested in the matter in question, (who is hereby required to examine and settle the same,) shall and may be deducted out of the money so assessed and adjudged, as so much money advanced to and for the use of such person or persons, and the payment or tender of the remainder of such monies shall be deemed and taken, to all intents and purposes, to be a payment or tender of the whole sum or sums so assessed and adjudged, or otherwise such costs and expences, in case the same or any part thereof shall exceed such damages, and shall not be paid upon demand, after being so ascertained and settled as aforesaid, may be recovered by the said trustees or commissioners by the ways and means hereinafter provided for the recovery of penalties and forfeitures: provided always, that in all cases where any person or persons shall, by reason of absence, have been prevented from treating, such costs and expences shall be borne and paid by the said trustees or commissioners in manner aforesaid. See § 141. and 143. *post.* 3 G.4. c.126.

§ 88. When any turnpike road shall be diverted or turned, and the new road shall be made and completed, such new road shall be in lieu of the old road, and shall be subject to all the provisions and regulations in any act of parliament contained, or otherwise, to which the old road was subject, and shall be deemed and taken to be a common highway, and shall be repaired and maintained as such; and the old road shall be stopped up, and the land and soil thereof shall be sold by the trustees or commissioners to some person or persons whose lands adjoin thereto, as hereinafter mentioned with regard to pieces of ground not wanted; but if such old road shall lead to any lands, house, or place, which cannot, in the opinion of the said trustees or commissioners, be conveniently accommodated with a passage from such new road, which they are hereby authorised to order and lay out if they find it necessary, then and in such case the old road shall be sold, but subject to the right of way and passage to such lands, house, or place respectively, according to the ancient usage in that respect; and the money arising from such sale in either of the said cases shall be applied towards the purchase of the land where such new road shall be made, or in the same manner as the tolls arising on such road, as the trustees or commissioners thereof shall think fit; and upon the completion of any contract whereby any part of the old road shall be given in payment for the value of the ground taken for the new road, or upon payment of the price of any part of the old road, the soil of such old road shall become vested in the purchaser thereof and his heirs; but all mines, minerals, and fossils lying under the same shall continue the property of the person or persons who would from time to time have been entitled to the same if such old road had continued.

When new road shall be completed, old highway to be stopped up, and the land sold.

Mines, &c.

3 G.4. c.126.

When any parts of land not wanted for the purposes of roads are to be sold, the first offer to be made to the original or adjoining owners.

§ 89. Where the trustees or commissioners of any turnpike road shall have purchased, or shall be possessed of any piece or pieces of ground not wanted for the purposes of such road, it shall be lawful for such trustees or commissioners to sell and dispose of the same: Provided always, that the said trustees or commissioners, before they shall sell and dispose of any such piece or pieces of ground not wanted for the purposes of such turnpike road as aforesaid, to any other person or persons, shall first offer the same to the person or persons of whom the same shall have been purchased, or to the person or persons whose lands shall adjoin thereto, and if such person or persons respectively shall then and thereupon refuse, or shall not agree (except with respect to or on account of the price thereof) to purchase the same respectively, on an affidavit being made and sworn before a master or master extraordinary in the high court of chancery, or before one of H. M.'s justices of the peace for the county, liberty, or place where such ground is situate (who are hereby respectively empowered to take such affidavit), by some person or persons no way interested in the said piece or pieces of ground, stating that such offer was made by or on the behalf of such trustees or commissioners, and that such offer was then and thereupon refused, or was not agreed to by the person or persons to whom the same was made, such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made, and was refused, or not agreed to by the person or persons to whom such offer was made (as the case may be); and in case such person or persons shall be desirous of purchasing such piece or pieces of ground, and he, she, or they and the said trustees or commissioners shall differ or not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury, in manner in this act directed with respect to disputed value of premises to be taken and used in pursuance of this act, and the expence of hearing and determining such difference shall be borne and paid in manner hereinbefore directed with respect to such purchases made by the said trustees, *mutatis mutandis;* and the money to arise by the sale or sales of such pieces or parcels of ground shall be applied by the trustees or commissioners to the purposes of the act for repairing and maintaining such turnpike road, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or non-application of such money; and the conveyances of such piece or pieces of ground shall be made to the purchaser or respective purchasers thereof, and in such manner and form as is hereinbefore directed with respect to the conveyances to be made of the land constituting any part of the roads hereinbefore directed to be sold.

What shall be evidence of such offer and refusal.

In case of dispute as to price, the value to be ascertained by a jury.

Application of compensation money exceeding 200*l.*

§ 90. If any money shall be agreed or awarded to be paid for any lands, tenements, or hereditaments, purchased, taken, or used by virtue of the powers of this act, by any trustees or commissioners of any turnpike road, which shall belong to any corporation, feme covert, infant, lunatic, tenant for life, or in fee tail general or special, or person or persons under any disability or incapacity, such money shall, in case the same shall amount to or exceed the sum of 200*l.*, with all convenient speed, be paid into the bank of *England*, in the name and with the privity of the accountant general of the high court of chancery, to be placed

to his account *ex parte* the trustees or commissioners of the road for which such lands, tenements, or hereditaments shall be taken, to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, tenements, or hereditaments, in the purchase of the land tax, or towards the discharge of any debt or debts, or such other incumbrances, or part thereof, as the said court shall authorise to be paid, affecting the same lands, tenements, or hereditaments, or affecting other lands, tenements, or hereditaments standing settled therewith to the same or to the like uses, trusts, intents, or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other lands, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner as the lands, tenements, or hereditaments, which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance of settlement shall be existing, undetermined, and capable of taking effect; and in the mean time, and until such purchase shall be made, the said money shall, by order of the said court of chancery, upon application thereto, be invested by the said accountant general, in his name, in the purchase of 3*l.* *per centum* consolidated, or 3*l.* *per centum* reduced bank annuities; and in the mean time, and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by the order of the said court, to the person or persons who would for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments so hereby directed to be purchased, in case such settlement or purchase were made. 3 G.4. c.126.

§ 91. If any money so agreed or awarded to be paid for any lands, tenements, or hereditaments, purchased, taken, or used for the purposes aforesaid, belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of 200*l.*, and shall amount to or exceed the sum of 20*l.*, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the said bank, in the name and with the privity of the said accountant general of the high court of chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinafter directed; or otherwise the same shall be paid, at the like option, to two trustees to be nominated by the person or persons making such option, and approved by three or more of the trustees or commissioners taking such lands, tenements, or hereditaments (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and the dividends and interest

Application of compensation money when less than 200*l.* and not less than 20*l.*

3 G.4. c.126.

arising thereon, may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the direction or approbation of the court of chancery.

Application of compensation money when less than 20*l.*

§ 92. Where such money so agreed or awarded to be paid as last before mentioned shall be less than 20*l.*, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used, in such manner as the said trustees or commissioners, or any three or more of them, shall think fit; or in case of lunacy or infancy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively.

If compensation money be refused or the titles to the land cannot be made out satisfactorily, or if persons cannot be found, then the money to be paid into the bank, subject to the order of the court of chancery on motion or petition.

§ 93. In case the person or persons to whom any sum or sums of money shall be awarded for the purchase of any lands, tenements, or hereditaments to be purchased by virtue of this act, shall refuse to accept the same, or shall not be able to make a good title to the premises, to the satisfaction of the trustees or commissioners, or any three or more of them, or in case such person or persons to whom such sum or sums of money shall be so awarded cannot be found, or if the person or persons entitled to such lands, tenements, or hereditaments be not known or discovered, then and in every such case it shall and may be lawful to and for the trustees or commissioners, or any three or more of them, to order the said sum or sums of money so awarded as aforesaid, to be paid into the bank of *England*, in the name and with the privity of the said accountant general of the said court of chancery, to be placed to his account, to the credit of the parties interested in the said lands, tenements, or hereditaments, (describing them,) subject to the order, control, and disposition of the said court of chancery; which said court of chancery, on the application of any person or persons making claim to such sum or sums of money, or any part thereof, by motion or petition, shall be and is hereby empowered, in a summary way of proceeding, or otherwise, as to the said court shall seem meet, to order the same to be laid out and invested in the public funds, and to order distribution thereof, or payment of the dividends thereof, according to the respective estate or estates, title or interest, of the person or persons making claim thereunto, and to make such other order in the premises as to the said court shall seem just and reasonable; and the cashier or cashiers of the bank of *England*, who shall receive such sum or sums of money, is and are hereby required to give a receipt or receipts for such sum or sums of money, mentioning and specifying for what and for whose use the same is or are received, to such person or persons as shall pay any sum or sums of money into the bank of *England* as aforesaid.

Persons in possession to be deemed lawfully entitled to the premises, until the contrary shall be shown to the court of chancery.

§ 94. Where any question shall arise touching the title of any person to any money to be paid into the bank of *England*, in the name and with the privity of the said accountant general of the said court of chancery, in pursuance of this act, for the purchase of any lands, tenements, or hereditaments to be purchased in pursuance of this act, or to any bank annuities to be purchased with any such money, or to the dividends or interest of any such bank annuities, the person or persons who shall have been in possession

of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person or persons, or under the possession of such person or persons, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments, according to such possession, until the contrary shall be shown to the satisfaction of the said court of chancery; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be applied and disposed of accordingly, unless it shall be made to appear to the said court, that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein. 3 G.4. c.126.

§ 95. Where by reason of any disability or incapacity of the person or persons or corporation entitled to any lands, tenements, or hereditaments to be purchased under the authority of this act, the purchase money for the same shall be required to be paid into the court of chancery, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses in pursuance of this act, it shall be lawful for the said court of chancery to order the expences of all purchases from time to time to be made in pursuance of this act, or so much of the said expences as the said court shall deem reasonable, together with the necessary costs and charges of obtaining such order, to be paid by the trustees or commissioners, or any three or more of them, who shall from time to time pay such sums of money for such purposes as the said court shall direct.

Court of chancery to direct payment of expences in cases where purchases of other lands are made.

By stat. 4 *G.*4. *c.*95. § 55. It is enacted, that all sales and conveyances of any lands, tenements, or hereditaments, to be sold by the trustees or commissioners of any turnpike roads, shall be made at the expence of such trustees or commissioners, and shall be expressed in the following or some similar form of words, as the circumstances of the case may require; *videlicet,*

4 G.4. c.95. Trustees to pay expence of sales of lands, &c.

WE, ——— *of the trustees or commissioners acting in execution of an act passed* [here insert the title of the act appointing them] *in consideration of the sum of* ——— *to us paid by* [name of the purchaser] *do hereby grant and release to the said* [name of the purchaser] *all* [describing the premises to be conveyed], *and all our right, title, and interest to and in the same, and every part thereof, to hold to the said* [name of the purchaser]; *his heirs, executors, administrators, and assigns, for ever, by virtue and according to the true intent and meaning of an act passed in the fourth year of the reign of king* George *the fourth, intituled* " An act [here set forth the title of this act]. *In witness whereof we have hereunto set our hands and seals, this* ——— *day of* ———.

Form of conveyances.

§ 65. It shall not be lawful for the trustees or commissioners of any turnpike road, in altering or diverting the course of any part of the turnpike road under their care and management, to take or pull down any dwelling house or other building, or in altering or diverting the course of any part of the turnpike road under their care and management, to deviate over any inclosed lands or grounds more than 100 yards from the line or course of such turnpike road, without the consent in writing of the owner or proprietor, or of the person or persons hereby authorised to act

Trustees not to pull down dwelling houses, or take in gardens, &c. without consent

4 G.4. c.95. for and on behalf of the owner or proprietor of such dwelling house or other building, or of such lands or grounds, or to take in or make use of any garden, yard, or paddock, or any park, planted walk, or avenue to a house, or any inclosed ground planted as an ornament or shelter to a house, or planted and set apart as a nursery for trees, or any part thereof respectively, without the like consent of the owner or proprietor thereof, or of the person or persons hereby authorised as aforesaid, first had and obtained; and it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees in trust, committees, executors, administrators, and all other persons whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of the person or persons entitled in reversion, remainder, or expectancy after them, and for and on behalf of their cestuique trusts, whether femes covert, infants, or issue unborn, lunatics, idiots, or other person or persons whomsoever, and to and for all femes covert who are or shall be seised of or interested in their own right, and to and for all and every person or persons whomsoever, who are or shall be possessed of or interested in any such lands, tenements, hereditaments, or premises, or who shall sustain any damage, to give their consent in writing to the said trustees or commissioners, for the taking or pulling down of such dwelling house or other building, or the making such deviation of more than 100 yards as aforesaid, or the making use of such garden, yard, paddock, park, planted walk, avenue, or other such premises as aforesaid, and to contract with the said trustees or commissioners for the sale thereof, or for the satisfaction to be made for the same, or for such damages as aforesaid, and by conveyance, lease and release, or bargain and sale, to sell and convey unto the said trustees or commissioners all or any such lands, tenements, hereditaments, or premises, or any part thereof, for the purposes aforesaid; and all contracts, sales, and conveyances which shall be so made, shall be good, valid, and effectual to all intents and purposes, without fine or recovery, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, and interests whatsoever, any law, statute, usage, custom, or other matter to the contrary notwithstanding; and all such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, and all other persons, shall be and are hereby indemnified for what they or any of them shall do by virtue or in pursuance of this act: provided always, that nothing herein contained shall extend or be deemed, taken, or construed to extend to revoke, limit, abridge, alter, or vary any powers or authorities contained in any act or acts of parliament existing and in force at the passing of this act, for making, altering, or diverting any turnpike road or roads, or the course thereof, to be made, altered, or diverted and maintained under the authority of such acts, but the same powers and authorities shall and may be exercised and carried into effect by the trustees or commissioners appointed by such acts, fully and effectually; any thing herein contained to the contrary notwithstanding.

§ 66. In all cases where the trustees or commissioners of any turnpike road shall turn or alter any part or parts of such turnpike road, or make any new road over and through any private grounds, or across any public or private footway, or shall take away any fence for widening or improving any such road, the said trustees or commissioners shall make or cause to be made and planted proper quickset hedges, or shall make or build proper fences or walls, on both sides of such new-made road, or on the side upon which any such fence may be so removed as aforesaid, with sufficient ditches to the same, and sufficient posts and rails, or other fence, on both sides of such quickset hedges, to protect the growth thereof, so as effectually to guard and fence off the lands adjoining any such road from trespass or injury by horses, asses, cattle, sheep, or swine; and also proper gates, stiles, posts bridges, and arches, where necessary, out of any such road into the lands adjoining, and shall keep such fences so to be made in good order and repair, for and during the term of five years from the time that such fences shall have been made or set up; unless the owners or proprietors for the time being of any such land or ground shall agree with the trustees or commissioners, to keep such fences in repair, from an earlier period, for such time as aforesaid. (*a*) 4 G. 4. c. 95. Trustees to fence roads.

§ 68. After reciting that whereas doubts have arisen and may arise, whether any body politic or corporate, or any particular person or persons, liable to repair, by tenure or otherwise, any old turnpike road, or part of such road widened, altered, diverted, or turned, ought to repair or contribute to the repair of the whole, or any part or proportion of the new road set out in lieu of the old turnpike road; for obviating such doubts, and preventing disputes about the same, it is enacted, that all and every body politic or corporate, and person and persons, who was, were, or shall be liable as aforesaid to the repair of any old turnpike road, which has been since the passing of the said recited act, (viz. 3 *G.* 4. *c.* 126.) or shall be widened, altered, diverted, or turned, shall respectively be and continue in the same manner liable to the repair of such new road, set out in lieu of the old road, or so much thereof as shall be equal to the burden and expence of repairing such old road, from which he, she, or they shall be exonerated by the widening, altering, diverting, or turning thereof; and if the several parties interested therein cannot agree, the same shall be viewed by two justices of the peace of the county where such road shall be, and shall be settled, adjusted, and determined by them, in such manner as they shall think just and reasonable; and from and after such determination of the justices, the body politic or corporate, and person or persons liable to repair such new road as aforesaid, shall bear all charges of presentments, indictments, and prosecutions for not repairing the same; and if it shall be found more convenient to fix Regulating the repair of roads when widened, &c. in cases of liability to repair old roads.

(*a*) If trustees under an act turn a road through an inclosure, and make the fences at their own expence, and repair them for several years, they cannot be compelled to continue such repairs, unless there be a special provision in the act to that effect. *R.* v. *The Commissioners of Llandilo District*, 2 *T. R.* 232. In this case it was considered, that what is meant by a road is the surface over which the king's subjects have a right to pass, and that the owners of the land are bound to repair the fences on each side, unless otherwise provided by the act. Repair of the fences where a road has been diverted.

4 G.4. c.95. a gross sum, or an annual sum, to be paid by any such body politic or corporate, or person or persons, instead of fixing the part or proportion of such new road to be repaired by him, her, or them, the said justices may, with the consent of such person or persons, and also of the trustees or commissioners of the road, obtained at a meeting of such trustees or commissioners, order and direct the same accordingly; and the order and direction of the said justices shall be final and conclusive, and shall continue binding on all bodies politic or corporate, and persons whomsoever.

Damages and charges in cases of dispute to be settled by justices.

By § 69, where by this act, or the said recited act, (*viz.* 3 *G.*4. *c.* 126.) or any act for making or maintaining any turnpike road, any damages or charges are directed or authorised to be paid or recovered, in addition to any penalty or penalties for any offence or offences, the amount of such damages or charges, in case of dispute respecting the same, shall be settled, ascertained, and determined by the justice or justices of the peace by or before whom any offender shall be convicted of any such offence or offences; who is hereby authorised and required, on nonpayment thereof, to levy such damages or charges by distress and sale of the offender's goods and chattels, in manner directed by the said recited act for the levying of any penalties or forfeitures.

Contracts or agreements may be made for amending roads, &c.

§ 78. It shall be lawful for the trustees or commissioners of any turnpike road, or for their clerk, surveyor, or any other officer by their order, to contract and agree, by the year or otherwise, with any person or persons for the making, amending, altering, or maintaining the said road, or any bridges, toll houses, or buildings thereon, or for any other thing which such trustees or commissioners are by any act for making or maintaining turnpike roads, or stat. 3 *G.*4. *c.* 126., or this act, or any other act, authorised or empowered to make, build, do, execute, or perform; and all contracts or agreements in writing entered into by the said trustees or commissioners, or pursuant to any order of the said trustees or commissioners, by their clerk, surveyor, or other officer, with any workmen or other person or persons relating to any matter or thing to be done by virtue of any such act, or the said recited act or this act, shall be binding on the said trustees or commissioners and their successors, and upon all other parties who shall sign the same, and the heirs, executors, and administrators of such other parties; and actions and suits shall and may be maintained thereon by the said trustees or commissioners, and damages and costs recovered against the party or parties, or person or persons failing in the performance of such contracts or agreements respectively; and such sum or sums of money as shall be requisite for the due performance of such contract shall be the measure of the damages to be recovered in any action or suit against such party or parties, or person or persons so as aforesaid making default in fulfilling his, her, or their contract or agreement.

§ IX. Powers to get Materials.

[3 G. 4. c. 126. § 97, 98, 99, 100, 101, 102, 103. — 4 G. 4. c. 95. § 56.]

3 G.4. c.126. Power to get

By stat. 3 *G.* 4. *c.* 126. § 97. It is enacted, that it shall be lawful for the surveyor or surveyors to the trustees or commissioners of

every turnpike road, and for all such persons as he or they shall appoint, to search for, dig, gather, take, and carry away any materials for making or repairing any turnpike road, out of any common river or brook, (not being within fifty yards of any bridge, dam, weir, or jetty,) or out of or from any waste or common in any parish, hamlet, or place in which any part of such road may lie, or in any adjoining parish, hamlet, or place, and to haul and carry away any such materials when got over any common or waste lands, without paying any thing for such materials, and without being deemed a trespasser or trespassers; the said surveyor or surveyors, or other person or persons, filling up the pits or quarries, levelling the grounds, or sloping down the banks wherefrom such materials shall be taken, or railing or fencing off such pits or quarries, so that the same shall not be dangerous to any persons or cattle, and paying or tendering for the damage done by going through and over any inclosed lands or grounds for or with such materials, and such damages to be ascertained as hereinafter mentioned; and also that it shall be lawful for the said surveyor or surveyors, and such person or persons as he or they shall appoint, to search for, dig, get, gather, take, and carry away any such materials, in or out of the land of any person or persons where the same may be had or found, in any parish, hamlet, or place in which any part of such road shall lie or be situate, *or in any adjoining* parish, hamlet, or place, (not being a garden, yard, park, paddock, planted walk, or avenue to any house, or any piece of ground planted and set apart as a nursery for trees,) making or tendering such satisfaction for such materials, and for the damage done to the owners or occupiers of the lands where and from whence the same shall be dug, gathered, and carried away, or over which the same shall be carried, as the said trustees or commissioners shall judge reasonable; and also to land on and carry through or over any inclosed lands or grounds, (not being a garden, yard, park, paddock, planted walk, or avenue to a house, or any piece of ground planted and set apart as a nursery for trees,) or on, through, or over any open land or common, any stone or other materials for making or repairing any such road, or for building or repairing any present or future toll house or toll houses on or by the sides thereof, from any river, stream, or canal, in any parish, hamlet, or place in which any such road lies, or in any adjoining parish, hamlet, or place, paying or tendering for the damage done in landing on or going through or over any inclosed lands or grounds for or with such materials, such sum or sums of money as the said trustees shall judge reasonable; and in case of any difference between such trustees or commissioners, surveyors, or other persons appointed or employed as aforesaid, and the owners and occupiers of such lands, or any of them, concerning such payments and damages, any two or more justices of the peace for the county, riding, or place wherein the place from whence such materials shall have been taken shall be situate, on ten days' notice thereof being given in writing by either party to the other, shall hear, settle, and determine the matter of such payments and damages, and the costs attending the hearing and determining the same.

3 G.4. c.126.

materials from any river or brook, or from any common or waste lands without expence,

but filling up the pits, &c.;

or from the lands of any person, not being garden ground, &c. on tendering satisfaction for damages;

and materials may be carried through any inclosed or open lands, on tendering damages.

Any differences as to damages may be settled by two justices.

§ 98. It shall not be lawful for any surveyor, or any other person or persons acting under the authority of this act, to dig,

Notice to be given before

3 G.4. c.126.

materials are taken from private lands, and two justices shall decide therein.

gather, get, take, or carry away any materials for making or repairing any turnpike road, or for other such purpose or purposes as aforesaid, out of or from any *inclosed* land or ground, *until notice in writing*, signed by the surveyor, shall have been given to the owner or owners of the premises from which such materials are intended to be taken, or his or her known agent, or to the occupiers of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or occupier, to appear before any two or more justices of the peace acting in and for the county, liberty, or place where the lands from whence such materials are intended to be taken shall lie, to show cause why such materials shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such justices shall, if they think proper, authorize such surveyor or other person to dig, get, gather, take, and carry away such materials, at such time or times as to such justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear by himself or herself, or his or her agent, the said justices shall and may (upon proof on oath of the service of such notice, and which oath they are hereby empowered to administer,) make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his or her agent, had attended. (*a*)

(*a*) See *R.* v. *Manning*, 1 *Burr.* 377.

If pits or holes are made in getting materials, surveyor shall cause them to be filled up or fenced off.

§ 99. If any surveyor of any turnpike road, or any person employed by him, shall, by reason of the searching for, digging, or getting, any gravel, sand, stones, chalk, clay, or other materials for repairing any highways, make or cause to be made any pit or hole in any common or other lands or grounds, rivers or brooks as aforesaid, wherein such materials shall be found, the said surveyor shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open, and shall, within three days after such pit or hole shall be opened or made, where no gravel, stones, or materials shall be found, cause the same forthwith to be filled up, levelled, and covered with the turf or clod which was dug out of the same; and where any such materials shall be found, within 14 days after having dug up sufficient materials in such pit or hole, if the same is not likely to be further useful, cause the same to be filled up, sloped down, or fenced off, and so continued; and if the same is likely to be further useful, the said surveyor shall secure the same by posts and rails, or other fences, to prevent accidents to persons or cattle; and in case such surveyor shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he or they shall forfeit the sum of 20*s*. for every such default; and in case such surveyor shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of six days after he or they shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before one or more of the said justices of the peace, such surveyor shall forfeit and pay any sum not exceeding 10*l*. nor less than 40*s*. for every such neglect,

Penalty for not filling up or fencing off, 20*s*.

Penalty for not fencing off, &c. in six days after receiving notice not more than 10*l*. nor less than 40*s*.

to be determined and adjudged by such justice or justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, in such manner as the said justice or justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied. See § 141. and 142. **3 G. 4. c. 126.**

Power to contract for lands to get materials.

§ 100. It shall and may be lawful for the said trustees or commissioners to contract and agree with any person or persons whomsoever for the purchase or demise from him, her, or them of, and to hold any land or ground for the purpose of digging stones, gravel, and materials therefrom for the repair or use of the said road, and at any time afterwards to sell the land or ground so purchased by public auction or tender: provided also, that the entering into any such contract or agreement as last aforesaid shall not be compulsory against any person or persons unwilling to enter into the same.

Penalty on taking away materials before surveyor has discontinued digging for them, *5l.*

§ 101. If any person or persons shall take away any materials which shall have been gotten, dug, or gathered for the repair or use of any turnpike road, or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any turnpike road, before the surveyor of such road and the workmen employed for getting such materials shall have discontinued working therein for the space of six weeks, (except the owner or occupier of any private grounds, and persons authorised by such owner or occupier to get materials in such quarry for his own private use, and not for sale,) every person so offending shall, for every such offence, forfeit and pay any sum not exceeding *5l.*

Repositories for materials to be provided.

Two justices shall settle any difference that may arise as to value.

§ 102. The trustees or commissioners of every turnpike road are hereby empowered to purchase or rent any piece or pieces of land or ground, not exceeding in any one place six yards square, on the sides of such road, as repositories for stone, gravel, and other materials for making or repairing the same; and in case any difference shall arise between such trustees or commissioners and the owner of such land or ground, with respect to the value thereof, or the necessity or propriety of taking such land or ground, the same shall be settled and determined by any two of H. M.'s justices of the peace acting in and for the county where the said land or ground shall be situated, in manner hereinbefore directed with respect to getting materials for the repair of any turnpike road.

Canal companies may lower their tolls on materials for repairing turnpike roads.

§ 103. It shall and may be lawful for the company of proprietors, or the trustee or trustees for the proprietors of any canal, or of any railway or tramroad, on which any flint, gravel, stone, or other materials for the repair of any turnpike road shall or may be conveyed, and they are hereby authorised and empowered, to lessen and reduce the tolls and rates imposed by any act of parliament by which any such company shall be appointed, or any other act whatsoever, on the carriage of such flint, gravel, stone, or other materials carried on the said canal or railway, and to appoint such lower tolls and rates to be taken for the carriage and conveyance of the same as the said company or trustees shall think proper; and all such reduced tolls shall and may be collected, taken, and recovered by the same persons and means, and by and under the same powers, provisions, penalties, and for-

3 G.4. c.126.

feitures, as the original tolls might have been taken in case the same should not have been reduced; any act or acts of parliament, bye-law or ordinance, or trust deed, to the contrary notwithstanding.

4 G.4. c.95. Ground may be purchased for repository of materials within ten miles of the Royal Exchange.

By stat. 4 *G.*4. *c.*95. § 56. It shall be lawful for the trustees or commissioners of any turnpike road, and they are hereby empowered, to purchase or rent, with the consent of the owner or proprietor thereof, any piece or pieces of ground within ten miles of the *Royal Exchange*, as a repository for materials, such piece or pieces of ground to be of such extent as they may think proper, so as the same shall not exceed in the whole half an acre.

§ X. Construction of, Breadth, and Tire of Wheels.

[3 G. 4. c. 126. § 7. 9. 11.—4 *G.*4. *c.*95. § 2. 5, 6, 7. 19.]

4 G.4. c.95. Nails of the tires of wheels of waggons, &c. to be so countersunk as not to project beyond ¼ of an inch above surface of tires. Penalty on using them contrary hereto after Jan. 1. 1826.

By stat. 4 *G.*4. *c.*95. § 2. It is enacted, that from and after the 1st day of *January*, 1826, the several nails of the tire or tires of the wheels of every waggon, wain, cart, or other such carriage used or drawn on any turnpike road, shall be so countersunk as not to project beyond one quarter of an inch above any part of the surface of such tire or tires; and if any waggon, cart, or other such carriage shall, from and after the said 1st day of *January*, 1826, be drawn or used on any turnpike road, with any wheel or wheels made, constructed, or being otherwise than as hereinbefore last described, the owner or owners thereof shall forfeit any sum not exceeding 40*s.*, and every driver thereof any sum not exceeding 20*s.*, for each and every time that such waggon, cart, or other such carriage shall be used or drawn on any turnpike road.

3 G.4. c.126. After Jan. 1. 1823, waggons, &c. having the fellies of wheels of less breadth than four and a half inches to pay one half more than the toll payable on waggons, &c. having six inch wheels. Where the wheels shall be four and a half inches and less than six inches in breadth, one-fourth more toll shall be paid.

By stat. 3 *G.*4. *c.*126. § 7. It is enacted, that from and after the 1st of *January*, 1823, the trustees or commissioners appointed by virtue or under the authority of any act made or to be made for making or maintaining any turnpike road, shall and they are hereby required to demand and take, or cause to be demanded and taken, for every waggon, wain, cart, or other such carriage, having the fellies of the wheels thereof of less breadth than four and a half inches at the bottom or soles thereof, or for the horse or horses or cattle drawing the same, one half more than the tolls which are or shall be payable for any carriage of the same description, having the wheels thereof of the breadth of six inches; and for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of the breadth of four and a half inches, and less than six inches at the bottom or soles thereof, or for the horse or horses or other cattle drawing the same, one-fourth more than the tolls or duties which are or shall be payable on any carriage of the like description, having the wheels thereof of the breadth of six inches, by any act now in force, or hereafter to be passed, for making or maintaining any turnpike road, before any such waggon, wain, cart, or other carriage respectively, shall be permitted to pass through any turnpike gate or gates, bar or bars, where tolls shall be payable by virtue of any such acts.

Where waggons or carts are constructed in a

§ 9. Where any waggon or cart shall have the sole or bottom of the wheels thereof rolling on a flat surface, and the nails of the tire of such wheels countersunk and be † cylindrical, (that is to say,)

† *Sic.*

of the same diameter on the inside next the carriage as on the outside, so that when such wheels shall be rolling on a flat or level surface, the whole breadth thereof shall bear equally on such flat or level surface, and shall have the opposite ends of the axle trees of such waggon, cart, or other carriage, so far as the same shall be inserted into the respective naves of the wheels thereof, horizontal, and in the continuance of one straight line, without forming any angle with each other, and in each pair of wheels belonging to such carriage, the lower parts when resting on the ground shall be at the same distance from each other as the upper parts of such wheels, it shall and may be lawful for the trustees or commissioners of any turnpike road, at a general meeting, if they shall think fit so to do, to make an order for every such waggon and cart to pass through any toll gate or bar under the superintendence of the trustees or commissioners making such order, upon paying only so much of the tolls and duties as shall not be less than two-thirds of the full toll or duty payable by any turnpike act, on such waggon, cart, or other carriage, and the horse or horses or cattle drawing the same.

3 G.4. c.126.

particular manner trustees may make order that the toll to be taken shall not be less than two-thirds of the full toll.

§ 11. It shall be lawful for any trustee or commissioner of any turnpike road, and for every collector or his deputy or other person acting by or under the authority of the trustees or commissioners of any turnpike road, or of their lessee of tolls, to measure and examine, or cause to be measured and examined, the breadth and construction of the wheels of every waggon, cart, or other such carriage passing on such turnpike road; such measurement and examination to take place, if the trustee, commissioner, or other authorised persons making the same shall so require, previously to such waggon, cart, or other carriage being allowed to pass through any toll gate or bar at which toll shall be payable; and if any owner or driver of any such waggon, cart, or other carriage, shall turn or drive out of the road, in order to avoid or evade the measuring of the wheels of such waggon, cart, or other carriage, or if any such owner, driver, or any other person, shall refuse to allow the wheels of any such waggon, cart, or other carriage to be measured, and the construction thereof examined, or shall attempt to pass through any toll gate or bar before such measurement and examination shall be made (the same having been required), or shall in any way hinder or obstruct any such trustee or commissioner, or other authorised person, in making such measurement and examination, every such owner, driver, or other person so misbehaving, shall for every such offence forfeit any sum not exceeding *5l.*; and it shall not be lawful for any such waggon, cart, or other carriage, not permitted to be measured or examined as aforesaid, to pass along any turnpike road; and if any collector or his deputy, or any other person appointed to collect the tolls, shall allow the same to pass before such measurement and examinations shall be made (the same having been required), every collector, deputy, or other person, shall for every offence forfeit any sum not exceeding *5l.*

Power to trustees to measure wheels.

Penalty on obstructing measurement, not exceeding *5l.*

Penalty on toll collector allowing waggons to pass before measurement, &c. not exceeding *5l.*

By stat. 4 *G.*4. *c.*95. § 5. It is enacted, that where the trustees or commissioners of any turnpike road shall not, previously to the passing of stat. 3 *G.*4. *c.*126., have taken and collected on the road under their care and management the additional tolls on waggons, wains, carts, or carriages having the wheels thereof of

4 G.4. c.95. Where 13 G.3. c.84. in respect of tolls to be taken for carriages with

4 G.4. c.95.

wheels of certain description has not been acted on, the tolls shall be payable according to the scale herein specified.

less breadth or gauge than six inches from side to side at the bottom or sole thereof, and on the horses or beasts of draught drawing the same, directed to be taken and collected by stat. 13 *G.* 3. *c.* 84., and the particular or local act or acts of parliament in execution whereof the said trustees or commissioners shall act, shall not have provided a scale of tolls applicable to the road under their care and management, such trustees or commissioners shall, from and after the 1st day of *January*, 1824, continue to take, collect, and receive, for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of less breadth or gauge than 4½ inches from side to side at the bottom or sole thereof, or for the horses or beasts of draught drawing the same, the same tolls as are in and by such particular or local act or acts payable in respect of such waggons, wains, carts, or other such carriages; and for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of the breadth or gauge of 4½ inches, and less than 6 inches at the bottoms or soles thereof, or for the horses or beasts of draught drawing the same, one-sixth less than the tolls which are or shall be payable for the same; and for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of the breadth of six inches or upwards at the bottoms or soles thereof, or for the horse or horses drawing the same, one-third less than the tolls or duties which are or shall be payable for the same by any act or acts of parliament made for making, repairing, or maintaining any turnpike road.

Where there is a scale of tolls adapted to the width of wheels, and additional tolls under 13 G.3. c.84. not collected, the scale of tolls imposed by the local act to continue.

§ 6. Where any particular act or acts of parliament now in force, for the making, repairing, or maintaining any turnpike road, shall direct a higher or lower rate of toll or tolls to be collected and taken on any waggon, wain, cart, or other such carriage, or on the horse or horses drawing the same, regulated by or in respect of the greater or lesser breadth of the wheels of such waggon, wain, cart, or other such carriage, and where, in addition to the tolls received under such particular act or acts, the additional tolls in respect of the breadth of wheels authorised to be taken by stat. 13 *G.* 3. *c.* 84., shall not have been collected and imposed, it shall and may be lawful for the trustees or commissioners acting in execution of any such particular act or acts of parliament, from and after the 1st day of *January*, 1824, to continue to collect the tolls directed to be taken under the powers and provisions of such act or acts of parliament, in execution whereof they shall act, and they shall not impose the additional tolls authorised and required to be levied by the said recited act on waggons, wains, carts, or other such carriages having the fellies of the wheels thereof of less breadth than six inches.

In case the tolls shall not be leased, or if leased by agreement with the lessee, they may be reduced before the 1st of January, 1824.

§ 7. Provided always, that in every case where the tolls authorised and empowered to be taken on any turnpike road shall be in the hands of the trustees or commissioners of such road, and not leased or let to farm, but collected on their account, the trustees or commissioners of such road shall, in case such tolls were increased by the provisions of the said recited act, within 14 days after the passing of this act reduce the said tolls, and fix the amount thereof according to the provisions of this act; and in case the tolls collected and taken on any turnpike road shall be leased and let to farm, it shall and may be lawful for the trustees

or commissioners of such road to compound and agree with the farmer or lessee of the said tolls for reducing the same, and fixing the amount thereof according to the provisions of this act; and in each of the said cases the provisions of this act with regard to tolls hereinbefore next mentioned shall then commence and take effect at the time of such reduction, and shall not be postponed to the said 1st day of *January*, 1824. **4 G.4. c.95.**

§ 19. Nothing in stat. 3 *G*.4. *c*.126. or this act contained relating to the breadth of the wheels of carriages, or to the regulations of weight, or to the tolls payable in respect of the wheels, or of the weight of carriages, shall extend or be construed to extend to any chaise marine, coach, landau, berlin, barouche, phaeton, sociable, chariot, calash, hearse, break, chaise, curricle, gig, chair, or taxed cart, or any cart not drawn by more than one horse or two oxen. **Breadth of wheels, or regulations as to weight, &c. not to extend to coaches, &c.**

§ XI. Weights of Carriages.

[3 G. 4. c. 126. § 12, 13, 14, 15, 16, 17, 18, 19, 20.—4 G. 4. c. 95. § 8, 9, 10. 16, 17. 20, 21. 89.]

By stat. 3 *G*. 4. *c*. 126. § 12. For regulating the weights to be allowed to waggons, wains, carts, and other carriages, it is enacted, that the weights hereafter next specified shall be allowed to every waggon, wain, cart, or other such carriage, (that is to say,) to every waggon, wain, or other four-wheeled carriage, having the fellies of the wheels thereof of the breadth of nine inches at the bottom or soles thereof, together with the loading of such carriage, six tons ten hundred weight in summer, and six tons in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels thereof of the like breadth, together with the loading of such carriage, three tons ten hundred weight in summer, and three tons in winter; to every waggon, wain, or other such four-wheeled carriage, having the fellies of the wheels thereof of the breadth of six inches and less than nine inches at the bottom or soles thereof, together with the loading of such carriage, four tons fifteen hundred weight in summer, and four tons five hundred weight in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels of the breadth last mentioned at the bottom or soles thereof, together with the loading of such last-mentioned carriage, three tons in summer, and two tons fifteen hundred weight in winter; to every waggon, wain, or other such four-wheeled carriage, having the fellies of the wheels thereof of the breadth of four inches and a half and less than six inches at the bottom or soles thereof, together with the loading of such carriage, four tons five hundred weight in summer, and three tons fifteen hundred weight in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels thereof of the breadth last mentioned at the bottom or soles thereof, together with the loading of such carriage, two tons twelve hundred weight in summer, and two tons seven hundred weight in winter; to every waggon, wain, or other such four-wheeled carriage, having the fellies of the wheels thereof of a less breadth than four inches and a half at the bottom or soles thereof, together with the loading of such carriage, three tons fifteen hundred weight in summer, and three tons five hundred weight in winter; to every cart or other

3 G.4. c.126. Regulating the weights of waggons, &c.

See Form (No. 2.).

3 G.4. c.126. such two-wheeled carriage, having the fellies of the wheels thereof of the breadth last mentioned, together with the loading of such carriage, one ton fifteen hundred weight in summer, and one ton ten hundred weight in winter; and for the several purposes of this act, it shall be deemed summer from the 1st day of *May* to the 31st day of *October*, both days inclusive, and winter from the 1st day of *November* to the 30th day of *April*, both days inclusive.

Additional weights for carriages built with springs.

§ 13. To every caravan, or other four-wheeled carriage used for the conveyance of goods, and built and constructed with springs, shall be allowed the weights following; that is to say, for every such carriage three tons and fifteen hundred weight in winter, and four tons five hundred weight in summer.

Two-wheeled drays drawn with three horses allowed 2 tons 16 cwt.

§ 14. To each and every dray with two wheels of not less than four inches and a half in breadth, and drawn by not more than three horses, and used in *London*, or within the bills of mortality, there shall be allowed at all times of the year, together with the loading of such dray, the full weight of two tons sixteen hundred weight; any thing in this or any act, &c. to the contrary notwithstanding.

Additional tolls for overweight.

§ 15. It shall be lawful for all trustees and commissioners appointed by or under any act or acts of parliament, for the making or maintaining of any turnpike road, or for any person or persons authorised by them, and they are hereby empowered and required to receive, take, and demand, over and above the tolls payable by any act or acts of parliament now in force, or hereafter to be passed, the following sums of money, as additional toll for every hundred weight of one hundred and twelve pounds to the hundred, which any waggon, cart, or other such carriage, together with the loading thereof, shall weigh at any weighing engine over and above the weights hereinbefore allowed to each of them respectively; (that is to say,) for the first and second hundred of such overweight, the sum of 3*d.* for each hundred; for every hundred of such overweight above two hundred and not exceeding five hundred, the sum of 6*d.*; for every hundred of such overweight above five hundred and not exceeding ten hundred, the sum of 2*s.* 6*d.*; and for every hundred of such overweight exceeding ten hundred, the sum of 5*s.*; which said additional sums or tolls hereby granted and made payable at any weighing engine, shall and may be levied and recovered in any of the cases aforesaid, in such manner as any other toll or duty payable on the road on which any such weighing engine shall be erected, is or shall be by law to be levied and recovered, and the monies arising therefrom shall be applied to the repairs of the turnpike road on which the same shall be recovered. *See* § 39.

Regulations as to weight not to extend to manure, &c.

§ 16. Provides, that the regulations of weight hereinbefore mentioned and provided shall not extend, or be deemed or construed to extend, to any waggons, carts, or other carriages *carrying only manure or lime for the improvement of land*, or any hay, straw, fodder, or corn unthrashed, except hay, straw, fodder, or corn carried for sale; nor to any waggons, carts, or other carriages, carrying only one tree or one log of timber, or one block of stone, or one cable or rope; nor shall the said regulations of weight extend to any chaise marine, coach, berlin, barouche, sociable, chariot, calash, hearse, break, gig, chaise, or taxed cart.

§ 17. And whereas many persons may at the time of passing this act be farmers or contractors for the tolls arising or payable on turnpike roads, and for tolls and penalties for overweight, and whose contracts will not expire until after the 1st of *January*, 1823; for remedy whereof, and for protection of such lessees or contractors, it is enacted, that in case any lessee or lessees, farmer or farmers, contractor or contractors for any toll or tolls, and penalties for overweight, payable to any trustees or commissioners appointed by virtue of any act of parliament for making, repairing, or amending turnpike roads, whose contract will not expire until after the 1st of *January*, 1823, shall, by reason of this act, be desirous of being discharged from his, her, or their contract or contracts, so far as regards such tolls or penalties for overweight, and of such his, her, or their desire shall, on or before the 1st of *September*, 1822, give notice in writing to the treasurer or clerk of any such trustees, then and in every such case all such farmers, lessees, or contractors shall, from and after the said 1st of *January*, 1823, be released and discharged from their respective contracts, so far as the same relate to such tolls or penalties for overweight; and all and every such contracts shall from thenceforth cease and be null and void as to the residue of the term or time then to come and unexpired therein, so far as such contracts relate to such tolls or penalties for overweight; any thing in such leases or agreements to the contrary notwithstanding.

3 G. 4. c. 126. Contractors of tolls may be released from their contracts, so far as regards tolls or penalties for overweight, on giving notice to the treasurer, or clerk of the trustees by September 1. 1822.

§ 18. In case any such lessee or lessees, farmer or farmers, contractor or contractors, shall give such notice of determining his, her, or their contract as hereinbefore mentioned, then and in every such case it shall be lawful for such trustees or commissioners, if they think fit, to make any new contract or contracts with such lessee or lessees, farmer or farmers, contractor or contractors, or to make any compensation to him, her, or them, in respect of such tolls or penalties for overweight, or to cause the said tolls or penalties for overweight to be re-let on a day and at a place to be by them appointed, of which one month's notice at least shall be given, and thereupon to proceed to re-let the same, and to re-let the same for the best price they may then be enabled to obtain for the same, without being compelled to put up the said tolls or penalties for overweight at the sum at which they were last let, or to have any other meeting for the letting thereof. See stat. 4 *G.* 4. *c.* 95. § 8, 9. p. 968, 969.

New contracts may be made with contractors.

§ 19. It shall not be lawful for the trustees or commissioners of any turnpike road, their lessee or lessees, collector or collectors, or other officers, to make any composition for any additional tolls or duties for or in respect of the overweight, or in any other manner as to the weight which any waggon, wain, cart, or carriage shall carry or weigh, any law to the contrary thereof notwithstanding; but every contract and agreement for such composition for overweight shall be null and void to all intents and purposes whatsoever; and every lessee, collector, or other officer entering into or agreeing to any such composition, and every person or persons with whom any such composition or agreement shall be made or entered into, shall, for every such composition or agreement, and for every abatement of toll for

Trustees not to make composition for overweight.

3 G. 4. c. 126.
Penalty, 50*l.*

overweight in consequence thereof, forfeit the sum of 50*l.* to any person or persons suing for the same.

Penalty on unloading goods, &c. to evade toll, or obstructing the weighing, 5*l.* on the owner of the waggon, &c. and not exceeding 40s. on the driver.

§ 20. If any person or persons shall unload, or cause to be unladen, any goods, wares, or merchandize, from any cart, waggon, or other carriage, at or before the same shall come to any turnpike gate or weighing engine erected by virtue or in pursuance of this or any other act made for the repair or preservation of any turnpike road, or shall load or lay upon such carriage, after the same shall have passed any such turnpike or weighing engine, any goods, wares, or merchandize, taken or unladen from any horse, cart, or other carriages belonging to or hired or borrowed by the same waggoner or carrier, in order to avoid the payment of the said respective duties payable for overweight; or if any person shall so unload in order to carry considerable quantities of goods through any turnpike gate, or by any weighing engine in one and the same day, and thereby pay less toll at such turnpike gate or weighing engine than would have been paid if such goods, wares, or merchandize had not been so unladen; or if any driver of any waggon or cart shall not wait a reasonable time whilst any other carriage shall be weighed, which shall have come to the weighing engine before the carriage of which he shall be the driver; or if the driver of any waggon or cart shall refuse or delay to remove or drive any such waggon or cart from the weighing machine, in order by such neglect or refusal to impede or delay the weighing of any other waggon or cart, or shall turn or drive out of any road, in order to avoid or evade the weighing of any waggon or cart; each and every person so offending in any of the cases aforesaid, and being thereof lawfully convicted before one or more justice or justices of the peace for the limit where the offence shall be committed, upon the oath of one or more credible witness or witnesses, shall forfeit the sum of 5*l.*, to be levied upon the goods and chattels of the owner of such cart, waggon, or other carriage; and each and every driver, not being the owner of such waggon or carriage, so offending, and being thereof convicted as aforesaid, shall forfeit any sum not exceeding 40*s.*, and in case of non-payment thereof, shall be committed to the house of correction for any time not exceeding two calendar months.

4 G. 4. c. 95.
Contractors of tolls may be released from their contracts so far as regards tolls or penalties for overweight, on giving notice to the treasurer or clerk of the trustees by September.

By stat. 4 *G.* 4. *c.* 95. § 8. After reciting, that whereas many persons may at the time of passing of this act be farmers or contractors for the tolls arising or payable on turnpike roads, and for tolls and penalties for overweight, and whose contracts will not expire until after the 1st day of *January*, 1824; for remedy whereof, and for protection of such lessees or contractors, it is enacted, that in case any lessee or lessees, farmer or farmers, contractor or contractors for any toll or tolls arising or payable on any turnpike road, or for any tolls and penalties for overweight, payable to any trustees or commissioners appointed by virtue of any act of parliament for making, repairing, or amending turnpike roads, whose contract will not expire until after the 1st day of *January*, 1824, shall, by reason of this act, be desirous of being discharged from his, her, or their contract or contracts, so far as regards such tolls arising and payable on any turnpike road, or any tolls and penalties for overweight, and of such his, her, or their desire, shall, on or before the 1st day of *September*, 1823, give notice in writing to the treasurer or clerk of any such trustees or

commissioners, then and in every such case all such farmers, lessees, or contractors shall, from and after the said 1st day of *January*, 1824, be released and discharged from their respective contracts, so far as the same relate to such tolls arising and payable on any turnpike road, or to such tolls or penalties for overweight; and all and every such contracts shall thenceforth cease, and be null and void, as to the residue of the term or time then to come and unexpired therein, so far as such contracts relate to such tolls arising and payable on any turnpike road, or to such tolls and penalties for overweight; any thing in such leases or agreements to the contrary notwithstanding. 4 G.4. c.95.

New contracts may be made with contractors.

§ 9. Provided also, that in case any such lessee, farmer, or contractor, shall give such notice of determining his contract, then and in every such case it shall be lawful for such trustees or commissioners, if they think fit, to make any new contract with such lessee, farmer, or contractor, or to make any compensation to him, in respect of such tolls payable on any turnpike road, or of the said tolls or penalties for overweight, or to cause the said tolls, and the tolls or penalties for overweight, to be re-let on a day and at a place to be by them appointed, of which one month's notice at least shall be given, and thereupon to proceed to re-let the same, and to re-let the same for the best price they may then be enabled to obtain for the same, without being compelled to put up the said tolls, or the said tolls or penalties for overweight, at the sum at which they last let, or to have any other meeting for the letting thereof. See § 18. p. 967.

No exemption by former acts to be claimed, unless carriages with 4½ inch fellies are used.

§ 10. No person shall by virtue of the said act, or this or any other act, have the benefit of any exemption from toll, or penalties for overweight, or to pay less toll for or in respect of any waggon, wain, cart, or other carriage, or the horses or beasts drawing the same, and carrying any particular kind of goods, than other carriages of the like nature carrying other goods ought to pay, unless such waggon, wain, cart, or other carriage, in respect of which the exemption shall be claimed shall have the sole of the bottom of the fellies of the wheels thereof of the breadth or gauge of 4½ inches or upwards, (other than and except carts and carriages employed in carrying corn or grain in the straw, hay, straw, fodder, dung, or lime for the improvement of land, or other manure, or any plough, harrow, or implements of husbandry only,) but the tolls imposed by any act, together with the additional tolls required to be taken for or in respect of every such waggon, wain, cart, or other carriage, having the sole or bottom of the fellies of the wheels thereof of less breadth or gauge than 4½ inches as aforesaid, and for horses or beasts of draught drawing the same, and the additional tolls or penalties for overweight (except as before excepted), shall be paid in the same manner, to all intents and purposes, as if no exemption or less toll had been allowed, and as fully as all other waggons, wains, carts, and carriages, and horses drawing the same, ought to pay, which are not entitled to any exemption, or to pay a less toll than other waggons, wains, carts, and carriages.

Loaded carts used on railways and tramroads not to be

§ 16. If any waggon or cart, built or constructed to be and usually used on any railway or tramroad, shall be drawn or pass loaded on any turnpike road, out of and away from such railway or tramroad, for the distance of more than one hundred yards, the

4 G.4. c. 95.

drawn on turnpike roads. Penalty.

owner or proprietor of every such waggon or cart shall forfeit and pay the sum of 40*s*., and the driver thereof, not being the owner, the sum of 20*s*. for each and every time such waggon or cart shall be so drawn and pass.

Exemptions from toll not to extend to the tolls for overweight, unless such tolls are also specially exempted.

§ 17. In case where any exemption from toll shall be claimed or allowed under the provisions of stat. 3 *G*. 4. *c*. 126., or this act, or any other act or acts for repairing and maintaining any turnpike road, such exemption shall not extend to or be allowed for the additional tolls imposed by the said recited act, and directed to be taken for every cwt. of 112lbs. to the hundred which any waggon, cart, or other such carriage, together with the loading thereof, shall weigh at any weighing engine, over and above the weights in and by the said recited act allowed to each of them respectively, unless the waggon, wain, cart, or other such carriage, in respect of which the exemption shall be claimed, shall likewise be by the said recited act or this or some other act or acts, specially exempted from such additional tolls for overweight; but in all cases (where not specially exempted) the said additional tolls shall be paid, and only the original toll allowed.

Trustees or commissioners within 10 miles of London may reduce tolls for overweight.

§ 20. The trustees or commissioners of the several turnpike roads within ten miles of the cities of *London* and *Westminster*, and the borough of *Southwark*, may and they are hereby empowered at any meeting or meetings to be held for the purpose (of which meeting or meetings, and the purposes thereof, fourteen days' notice shall be given,) to lower the several additional tolls by the said recited act directed to be taken for overweight, in such manner as to them shall seem fit and convenient, and from time to time to take such reduced tolls for overweight as shall be fixed and agreed on at such meeting or meetings.

Regulations of weight not to extend to one piece of metal.

§ 21. The regulations of weight in stat. 3 *G*. 4. *c*. 126. or this act mentioned and provided, shall not extend to any waggon, wain, cart, or other carriage carrying only one block, plate, roll, or vessel of iron or other metal, or compounded of any two or more metals cast, wrought, or united in one piece.

Schedule No. 1. (table of weights) to be used instead of schedule No. 2. of recited act.

§ 89. And whereas the schedule (No. 2.), intituled, "Table of weights allowed in winter and summer to carriages directed to be weighed (including the carriage and loading)" has been found defective; it is enacted, that the said schedule shall be and the same is hereby repealed; and the schedule (No. 1.) annexed to this act shall be made use of instead thereof. *See* Form No. 2. *post*.

§ XII. Weighing Engines to be erected, with additional Tolls for Overweight.

[3 *G*. 4. c. 126. § 21, 22, 23, 24, 25.]

3 G. 4. c. 126. Power given for erecting weighing machines.

By stat. 3 *G*. 4. c. 126. § 21. It is enacted, that it shall and may be lawful for the said trustees or commissioners, at any of their respective meetings, if they think proper, to order and cause to be built and erected, at any of the turnpikes or toll gates on the roads under their care and management, or at such distance therefrom as they shall think expedient, one or more crane or cranes, machines or engines, with a suitable house or other building thereto, proper for the weighing of waggons or carriages

conveying any goods or merchandize whatsoever, and by notice on a board for that purpose, to be put up at every such weighing machine, to order and direct all and every such waggons or carriages which shall come within 100 yards of any crane, machine, or engine, to be weighed, together with the loading thereof. See Form (No. 1.). 3 G.4. c.126.

§ 22. Enacts, that the keeper of every toll gate or bar where any weighing engine shall be erected, or any other person appointed or to be appointed by the trustees or commissioners, or by their lessee or lessees, to the care of such weighing engine, shall and is hereby required to weigh all such waggons, carts, and other carriages liable to be weighed, which shall pass loaded through such gates or bars respectively, and which he shall believe to carry greater weights than are allowed to pass without paying the said additional toll; and if any collector or person so appointed shall permit any such waggon, cart, or other carriage to pass by or through any such toll gate with greater weights than are hereby allowed, without weighing the same and receiving such additional tolls, he shall for every such offence forfeit the sum of 5*l.*; and if the owner or driver of any waggon, cart, or other carriage shall refuse to allow the same to be weighed, or shall resist any gate keeper or toll collector in weighing the same, every owner or driver so offending shall forfeit any sum not exceeding 5*l.*

Where weighing engines are erected, toll keepers to weigh waggons, &c. of greater weight than allowed, and not suffer them to pass without paying the additional toll.

Penalty on obstructing the weighing not exceeding 5*l.*

§ 23. And in order to detect the said collector or receiver in any fraudulent contrivance or neglect of duty in the matters aforesaid, it is enacted, that it shall be lawful for any trustee or commissioner, or surveyor of every turnpike road, if he shall suspect any such connivance or neglect, to cause any waggon, cart, or other carriage which shall have passed through any toll gate where any weighing engine shall be erected, and shall not have passed above three hundred yards beyond such toll gate, to return to such weighing engine, and be there weighed with the loading which passed through such toll gate, in the presence of such trustee or commissioner or surveyor, upon requiring the driver thereof to drive such carriage back to such weighing engine, and upon paying or tendering to him the sum of 1*s.* for so doing; which sum of 1*s.* shall be returned to the person paying the same, if upon weighing such carriage and the loading thereof it shall be found above the weight hereby allowed.

Trustees, &c. may cause waggons, &c. to return to be weighed, in case of neglect of duty of the collector.

§ 24. For the better enforcing the authority of this act, it is enacted, that the surveyors of every turnpike road shall, and they are hereby authorised and required to make convenient places for turning such carriages upon every such turnpike road where any weighing engine shall be erected, within 300 yards of such toll gate, on each side thereof, if the ground will admit of the same; and if the driver of any such carriage, being so requested to return with his carriage to such weighing engine, shall neglect or refuse so to do, he shall forfeit any sum not exceeding 5*l.*; and it shall and may be lawful for any peace officer or other person or persons being then present, upon such neglect or refusal, to drive and take such carriage back to such weighing engine, in order to be weighed as aforesaid.

Surveyors to make convenient places for turning carriages where weighing engines are erected.

Drivers refusing to return to forfeit not exceeding 5*l.*

§ 25. When two or more turnpike roads meet at or near the same place, it shall be lawful for the trustees or commissioners of

Where turnpike roads on differ-

3 G.4. c.126.

ent trusts meet, trustees to fix on some place for erecting a weighing engine, and proportion the expence, &c.

such turnpike roads respectively, at a meeting to be held for that purpose, to fix upon some convenient place to erect a weighing engine upon, which will accommodate all such turnpike roads, and by agreement amongst themselves at such meeting to proportion the expences which may attend the making, erecting, maintaining, and keeping in repair such weighing engine, and likewise the money arising from forfeitures to be incurred for overweight at such weighing machine, amongst all such turnpike roads, in such manner as to them shall appear just and reasonable. See Form (No. 3.).

§ XIII. Exemptions from Tolls.

[3 G. 4. c. 126. § 26, 27, 28, 29, 30. 32, 33. 35, 36.—4 G. 4. c. 16. § 1, 2.—4 G. 4. c. 95. § 23, 24. 26.]

3 G.4. c.126. Exemptions from toll on manure, &c. contained in any act, to be in force notwithstanding the same should be carried into or brought from an adjoining parish.

By stat. 3 *G.* 4. *c.* 126. § 26. It is enacted, that in every case in which under any act or acts of parliament relating to any turnpike road, there is an exemption from toll or duty in respect of any horse, mule, ass, ox, waggon, cart, or other carriage, drawing or carrying any dung, mould, marl, or compost of any nature or kind soever, for improving or manuring the land, or hay, straw, or any other fodder for cattle, or materials for repairing any turnpike road or highway, such exemption shall be deemed to extend in respect of every such waggon, cart, or other carriage, and also in respect to the cattle drawing the same, going empty or loaded only with implements necessary for more convenient carriage, or loading or unloading such lading, or returning empty, or with such implements as aforesaid, having been so laden, notwithstanding the said waggon, cart, or other carriage shall, for the purpose aforesaid, go to or return from any parish or place in which the said turnpike does not lie.

Tolls payable on waggons going empty for road materials, &c. to be repaid when returning laden.

§ 27. For the preventing of frauds on toll collectors by waggons, carts, or other carriages passing empty, or loaded only with implements necessary for the more convenient carriage of, or for loading or unloading manure, or materials for the repair of any turnpike road or highway, through turnpike gates, under pretence of going for such manure or materials, the owner or driver of every such empty waggon, cart, or carriage, claiming the same exemptions or any of them, shall in all cases pay the toll in respect of such waggon, cart, or other carriage, before the same shall be permitted to pass through such turnpike gate; and the collector of such toll shall thereupon deliver to such owner or driver a ticket, to be marked "*manure exemption*" or "*road materials*" (as the case may be), with the name of the gate and the date when delivered, and the amount of the toll so paid; all which sum or sums so paid shall be repaid to the owner or driver of such waggon, cart, or other carriage, upon his or their returning with such waggon, cart, or other carriage so laden as aforesaid, and producing such ticket; and every collector of such toll refusing to give such ticket on receiving the toll, or refusing or neglecting to return the same toll upon the return of such waggon, cart, or other carriage so laden, and re-delivery of the "*manure exemption*" or "*road materials*" ticket, (as the case may be,) shall for every such offence forfeit to the owner of such waggon, cart,

or other carriage, a penalty of not more than 5*l.*, upon conviction, thereof before one or more justice or justices of the peace for the county, riding, division, or place where such offence shall be committed, upon the oath of one credible witness.

3 G.4. c.126. Penalty for not returning such tolls not exceeding 5*l*.

§ 28. Enacts, that the owner or driver of any waggon, cart, or other carriage laden with manure for land, or materials for any turnpike road or highway, passing through any turnpike gate, or otherwise passing on or across any turnpike road, shall not be liable to pay any toll, nor shall any toll be demanded for such carriage so laden, or the cattle drawing the same, by reason only of any basket or baskets, empty sack or sacks, or spade, shovel, or fork necessary for loading or unloading such manure or materials, being in or upon any such waggon, cart, or other carriage, in addition to such manure or materals, if the loading thereof is substantially manure for land, or materials for the repair of any turnpike road or highway as aforesaid; any thing in any act contained to the contrary thereof notwithstanding.

Toll not to be taken on account of baskets, &c. being in waggons, &c. laden with manure, &c.

§ 29. All horses travelling for hire under the post-horse duties' acts, having passed through any turnpike gate erected or to be erected on any turnpike road, drawing any carriage in respect of which any toll shall have been paid, on returning through the turnpike gate at which the toll shall have been paid, and the other gates (if any) cleared by such payment, either without such carriage, or drawing such carriage, the same being empty, and without a ticket denoting a fresh hiring, shall be permitted to repass toll free, although such horses or carriage shall not have passed through such turnpike gate on the same day: provided that such horses so travelling shall return before nine of the clock of the morning succeeding the day on which they first passed the turnpike gate at which the toll shall have been paid. (*a*)

Post horses having passed through any gate may return toll-free before nine in the morning of the following day.

§ 30. Where any horse or horses shall pass through any turnpike gate on any road, not drawing any carriage, and a toll shall

Horses having passed through

(*a*) As to what letting to hire comes within the post-horse duties' acts, see *Welsford* v. *Todd*, 8 *East*, 586.; *The King* v. *Swift*, 8 *East*, 584. note (*a*); *The King* v. *Tooley*, 3 *T. R.* 69.; *Hanley* v. *Cubberly*, 15 *East*, 257.; *Ramsden* v. *Gibbs*, 1 *B.* & *C.* 319. An act imposed a toll on carriages drawn by so many horses, and so much on every horse, and exempted any person from the payment of toll more than once in any one day for passing or repassing with the same horse or carriage; another clause provided "*that in all carriages travelling for hire, the traveller or passenger conveyed therein should be considered as the person paying the toll, and that such payment should not exempt such carriages passing with a different traveller.*" It was decided that this latter clause did not extend to *stage coaches*, the carriage itself not being hired, but only a conveyance by it; and, therefore, that such stage coaches were freed from toll, under the former clauses, by one payment in the day, although returning with different passengers and different horses, the horses being the same in number. *Williams* v. *Sangar*, 10 *East*, 66.

Where by a local turnpike act, 2 *G.* 3. *c.* 67., a certain toll was imposed upon *carriages*, and not on the *horses* drawing them, with a provision that no persons having paid such tolls, and producing a ticket, &c., should be again liable on the same day; and by a subsequent act, reciting the former, the tolls were repealed and other tolls were imposed in respect of the *horses* drawing, and not on the carriages; but re-enacting and continuing all the provisions, regulations, &c., of the former act: the court of C. P. held that where the toll imposed by the latter act had been paid for horses passing with a carriage, these horses were exempted from toll on returning the same day, although drawing a different carriage. *Gray* v. *Shilling*, *E.* 1 *G.* 4. 2 *Brod.* & *Bing.* 30.

3 G.4. c.126.

a gate, and returning drawing a carriage, the toll paid on the horses to be deducted.

be paid on such horse or horses at such turnpike gate, and the same horse or horses shall return drawing any carriage on the same day, or within eight hours after their first passing through such gate, the toll paid on such horse or horses on their originally passing shall be deducted from the toll payable on the same when drawing the carriage to which they shall be attached on their return, so that no higher toll shall in the whole be taken than if such horse or horses had in the first place passed through such turnpike gate drawing the said carriage.

Exemptions from tolls: horses and carriages attending H. M. &c. or conveying materials for roads and bridges.,

§ 32. No toll shall be demanded or taken by virtue of this or any other act or acts of parliament, on any turnpike road, for any horses or carriages attending H. M. or any of the royal family, or returning therefrom; or of or from any person or persons, for any horse or horses or other beast or cattle, or for any waggon, wain, cart, or other carriage employed in carrying or conveying, or going empty to fetch, carry, or convey, or returning empty from carrying or conveying, having been employed only in carrying or conveying, on the same day, any stones, bricks, timber, wood, gravel, or other materials for making or repairing any turnpike road or public highway, or for building, rebuilding, or repairing any present or any future bridge or bridges on any such road or public highway; [or of or from the surveyor of any turnpike road when engaged in executing or proceeding to execute, within the limits of his own or any adjoining trust, the powers of this or any other act or acts of parliament for repairing, maintaining, or relating to any turnpike road;] or for any horse, beast, or other cattle or carriage employed in carrying or conveying, having been employed only in carrying or conveying on the same day any dung, soil, compost, or manure (save and except lime (*a*), for improving lands; or any ploughs, harrows, or implements of husbandry (unless laden also with some other thing not hereby exempted from toll); or any hay, straw, fodder for cattle, and corn

repealed by 4 G.4. c.95. § 25.

or manure (except lime);

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4 G.4. c.16. Recited act not to authorise collectors of tolls to take toll for lime, unless authorised by some local act.

(*a*) By stat. 4 *G.4. c.16.* § 1. after reciting stat. 3 G. 4. c. 126. and "whereas doubts have arisen whether, under the provisions of the said act, *lime for improving land*, although exempted from toll by several local acts, may not by the said recited act be made chargeable with toll:" for removing such doubts, it is enacted, "that nothing in the said act shall extend or be construed to extend to enable any collector or collectors of tolls authorised to be taken under any local act or acts of parliament, for horses or carriages employed in carrying or conveying lime for the improvement of land to take or demand any toll for lime as aforesaid, other than such as might have been demanded and taken under the authority of any such local act, previous to the passing of the said recited act.

Abatement to be made in cases of contract for tolls, where toll on lime was considered to be payable, or contract to be void after the expiration of a month.

§ 2 Provided, that in all cases where any lease or contract shall have been made since the passing of the said recited act, by any trustees of any turnpike road or roads to or with any collector or collectors of tolls, for letting to farm any tolls to be received or taken upon any such road or roads whereon a toll on lime for improving land was payable, or considered to be payable, under the said recited act, at the time of making or entering into any such lease or contract, it shall and may be lawful to and for the said trustees to make such fair and reasonable abatement in the rent payable by such collector or collectors during the unexpired residue of such lease or contract as aforesaid, as shall be agreed upon by and between the said trustees and such collector or collectors as aforesaid, or such lease or contract shall at the expiration of one calendar month after the passing of this act either become absolutely void, upon payment, but not otherwise, by such collector or collectors, or his, her, or their heirs, executors, or administrators, of all rent and arrears of rent, or sum or sums of money which shall be due and payable by him, her, or them, at and up to the end of the said calendar month.

in the straw, which has grown or arisen on land or ground in the occupation of the owner of any such hay, straw, fodder, or corn in the straw, potatoes, or other agricultural produce, and which has not been bought, sold, or disposed of (*a*), nor is going to be sold or disposed of; or for any horses or other beasts employed in husbandry going to or returning from plough or harrow, or to or from pasture or watering place (*b*), or going to be or returning from being shoed or farried, such horses or other beasts not going or returning on those occasions *more than two miles on the turnpike road on* which the exemption shall be claimed; or of or from any person or persons going to or returning from his, her, or their proper parochial church or chapel, or of or from any other person or persons going to or returning from his, her, or their usual place of religious worship tolerated by law, on *Sundays*, or on any day on which divine service is by authority ordered to be celebrated; or of or from any inhabitant of any parish, township, or place, going to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or hamlet in which any turnpike road shall lie; or from any rector, vicar, or curate going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish; or for horses, carts, or waggons employed only in carrying or conveying any vagrant sent by a legal pass, or any prisoner sent by any legal warrant, or returning empty after having been so employed; or for any horses or carriages, of whatever description, employed or to be employed in conveying the mails of letters and expresses under the authority of H. M.'s post-master general, either when employed in conveying, fetching, or guarding such mails or expresses, or in returning back from conveying or guarding the same; or for the horse or horses of any officers or soldiers on their march, or on duty; or for any horse or horses or other beast, or any cart, carriage, or waggon employed in carrying or conveying, or returning empty from carrying or conveying, having been employed only in carrying or conveying the arms or baggage of any such officers or soldiers, or employed in carrying or conveying, or

3 G.4. c.126.

or agricultural produce not sold or for sale; or for horses employed in husbandry, &c.;

or for going to or returning from church;

or for attending funerals;

or from ministers attending their duty;

or for conveying vagrants; or prisoners;

or for conveying the mails;

or for horses of officers or soldiers on duty;

or for conveying baggage, or any sick, ordnance, or public stores;

(*a*) These exemptions in favour of agriculture are to be beneficially construed. *Hickinbotham* v. *Perkins*, 3 *Moore*, 185. 8 *Taunt*. 795. *S. C.*

(*b*) "*Going to or from pasture or watering place.*" In a local act imposing tolls on horses, &c., "cattle going to or returning from pasture," and "horses attending cattle returning from pasture," were exempted; it was held, that a horse ridden by the owner of the cattle at pasture, in order *to fetch* them from pasture, did not come within either of the exceptions. *Harrison* v. *Brough*, 6 *T. R.* 706.

If this were allowed to be an exemption, it would open a great door to fraud on the turnpike men. Per Ld. *Kenyon* C. J., *S. C.*

"*A person going to or returning from his proper parochial church or chapel.*" In a local act, 37 *G.* 3., was a provision that no toll should be demanded or taken for the passage of any person or persons residing in any township or parish in which the roads lay, "going to or returning from their proper parochial church, chapel, or other place of religious worship on Sundays." The court of K. B. held the word "parochial" to extend over the whole clause, and that, therefore, a dissenter was not within the exemption in going to, or returning from, his proper place of religious worship, situated out of the parish in which he resided. *Lewis* v. *Hammond*, 2 *B.* & *A.* 206.

It will be observed that a member of the established church is liable to toll out of his parish; the dissenter not. See the next clause, and Mr. Dehany's observations on these acts, p. 21, 22.

3 G.4. c.126.

returning empty from having been employed only in carrying or conveying any sick, wounded, or disabled officer or soldiers; or for any waggon, wain, cart, or other carriage whatsoever, or the horse or horses or other cattle drawing the same, employed in conveying any ordnance, or barrack, or commissariat, or other public stores of or belonging to H. M., or for the use of H. M.'s forces, or returning empty from having been so employed; or for any carriage conveying volunteer infantry, or for any horse furnished by or for any person belonging to any corps of yeomanry or volunteer cavalry or infantry, and rode by him in going to or returning from any place appointed for and on the days of exercise, inspection, or review, or on other public duty, provided that such person shall be dressed in the uniform of his corps, and shall have his arms, furniture, and accoutrements according to the regulations of such corps at the time of claiming the exemption; or for any horses or carriages carrying or conveying any person or persons to or from any election or elections of a knight or knights of the shire to serve in parliament for the county or counties in which such turnpike road shall be situated; or for any horses or carriages which shall only cross any turnpike road, or shall not pass above one hundred yards thereon. (*a*)

or for horses and carriages used by corps of yeomanry, &c.; or for conveying persons to or from county elections; or for crossing roads, &c.

Exemption from toll on Sundays, &c. for persons going to and returning from church not to extend to any turnpike within the distance of five miles of London, &c.

§ 33. Provides, that so much of this act as directs that no toll shall be demanded or taken from any person or persons going to or returning from his, her, or their proper parochial church or chapel, or of or from any other person or persons going to or returning from his, her, or their usual place of religious worship tolerated by law, on *Sundays*, or on any day on which divine service is ordered by authority to be celebrated, shall not extend, or be construed to extend, so as to exempt any such person or persons from the payment of toll at any turnpike gate or gates situate *within* the distance of five miles of the *Royal Exchange* in the city of *London*, or within the distance of five miles of *Westminster Hall* in the city and liberties of *Westminster*.

Exempting carriages conveying king's stores, &c. from penalties for overweight.

§ 35. No person owning or driving, or causing to be driven, any waggon, wain, cart, or other carriage provided for the service of H. M.'s forces, or conveying any ordnance, or barrack, or commissariat, or other public stores of or belonging to H. M., or for the use of H. M.'s forces, shall be subject to any additional toll, penalty, or forfeiture for overweight; nor shall any such waggon, wain, cart, or other carriage, or the horse or horses drawing the same, while so employed, be stopped or detained by reason of any weight in any such waggon, wain, cart, or other carriage, or of being drawn by any number of horses or oxen; but it shall be lawful for the owner or driver of any such waggon, wain, cart, or other carriage, to put any number of horses or oxen to such waggon, wain, cart, or other carriage; any thing in this or any other act of parliament to the contrary notwithstanding.

(*a*) A question arose on stat. 13 *G.* 3. *c.* 84. § 34. (which contained a similar exemption, but differently worded, viz. "which shall only cross such road, *and* shall not pass above one hundred yards thereon.") Whether a carriage, which did not cross the road, but quitted it again on the same side on which it entered was not, although not passing the hundred yards, liable to toll? The court of C. P. decided that it was *not liable*, observing that the statute meant to exempt carriages making a very slight use of the road. *Major* v. *Oxenham*, 5 *Taunt.* 340.

§ 36. If any person or persons shall, by any fraudulent or collusive means whatsoever, claim or take the benefit of any exemption from toll or overweight, or for using any additional horse or horses, or of any other exemption or exemptions whatsoever in this act contained, every such person shall, for every such offence, forfeit any sum not exceeding *5l.*; and in all cases the proof of exemption shall be upon the person claiming the same. 3 G.4. c.126. Penalty not exceeding *5l.* on fraudulently taking the benefit of exemption.

By stat. 4 *G.* 4. *c.* 95. § 23. Nothing in stat. 3 *G.* 4. *c.* 126. or this act contained shall extend to exempt any waggon, wain, cart, or other carriage laden with dung, compost, or manure for manuring land, or any horse or other beast drawing the same, from any toll imposed in respect thereof by any local act or acts for making, repairing, and maintaining any particular roads, where in such act or acts such dung, compost, or manure shallbe specially made subject to toll throughout the whole of such roads, without any local, parochial, or partial exemption. 4 G.4. c.95. Carriages laden with dung not to be exempted from toll when charged by any local act.

§ 24. No toll shall be demanded or taken by virtue of the said recited act or this act, or any other act or acts for making or maintaining turnpike roads, for any horses or carriages attending or going to attend, or returning from having attended H. M., or any of the royal family. Horses and carriages belonging to the royal family exempted from toll.

§ 26. Nothing herein, or in the said recited act contained, shall extend, or be deemed or construed to extend to repeal or take away any exemptions from toll which shall have been granted or allowed by any act for making or repairing any turnpike road. Recited act not to take away exemptions granted by local acts.

§ XIV. Tolls to be paid upon Carriages affixed to others, and for Oxen.

[3 G. 4. c. 126. § 31. 38.]

By stat. 3 *G.* 4. *c.* 126. § 31. After reciting that whereas coaches, chariots, chaises, chairs, carts, and other carriages sometimes pass through turnpike gates affixed, tied, or secured to waggons or carts, and horses are sometimes sent under the charge of the drivers of such waggons and carts, and are fastened thereto; and that it is expedient to determine what tolls such coaches, chariots, chaises, chairs, carts, and other carriages, and horses, ought to pay on passing through such gates; it is enacted, " that where by any act for repairing any turnpike road no toll is directed to be taken for or in respect of any coach, chariot, chaise, or any other carriage whatsoever with four wheels passing through any turnpike gate on such road, affixed, tied, or secured to any waggon or cart, the same toll, and no more, shall and may be demanded and taken for, and in respect of such coach, chariot, chaise, or other carriage, as if the same had passed through drawn by two horses; and where by any act for repairing any turnpike road no toll is directed to be taken for or in respect of any chair, cart, or other carriage whatsoever, with two wheels only, passing through any turnpike gate on such road, so affixed, tied, or secured to any waggon or cart as aforesaid, the same toll, and no more shall and may be demanded and taken for and in respect of such chair, cart, or other carriage with two wheels only, as if the same had passed through drawn by one horse only; and where any horse shall be fastened to but not used in drawing any waggon, cart or 3 G.4. c.126. Tolls to be paid upon carriages affixed to others.

3 G.4. c.126.

other carriage, such horse shall not be liable to a higher toll than a single horse: provided that if any coach, chariot, chaise, chair, cart, or other carriage so affixed, tied, or secured to any waggon or cart, shall have any goods conveyed therein other than the harness thereto belonging, and such articles of package as may be necessary for the protection of such carriages, the same shall be liable to double the toll hereby imposed.

Two oxen to be considered as one horse.

§ 38. In all carriages wherein oxen or neat cattle shall be used, two oxen or neat cattle shall be considered as one horse, for all the purposes mentioned in this act, or any particular turnpike act with respect to tolls or other things.

§ XV. Tables of Tolls to be put up at Turnpike Gates — Recovery of Tolls — Penalty for evading.

[3 G. 4. c. 126. § 37. 39, 40, 41. — 4 G. 4. c. 95. § 28.]

3 G.4. c.126. Trustees to put up a table of the tolls.

By stat. 3 *G.4. c.*126. § 37. It is enacted, that on or before the 1st day of *January*, 1823, the trustees and commissioners of every turnpike road shall, and they are hereby required to put up or cause to be put up, and afterwards to be continued at every toll gate within their respective districts, a table painted in distinct and legible black letters on a board with a white ground, containing at the top thereof the name of the gate at which the same shall be put up, and also a list of all the tolls payable at every such gate, distinguishing the several tolls, and the different sorts of carriages for which they are to be paid, where there shall be any variation therein, and also a list of the several gates which shall be wholly or partially cleared by the payment of toll at the toll gate or bar where such table of tolls shall be affixed; and the said trustees or commissioners shall also provide tickets denoting the payment of toll, and on such several tickets shall be named and specified the name of the gate at which the same respectively shall be delivered, and also the names of the several gates freed by such payment, one of which tickets shall be delivered *gratis* to the person paying the toll; and on the production of such ticket at any gate or gates therein mentioned as being cleared by the payment of the toll at the gate where such ticket was delivered, the person producing the same shall pass through the gate or gates therein mentioned, without paying any further or additional toll.

Tickets denoting payment of toll to be provided and delivered to the persons paying the toll.

4 G.4. c.95. Trustees to put up a table of the tolls, with the names of the gates.

By stat. 4 *G.* 4. *c.* 95. § 28. The trustees and commissioners for making or maintaining any turnpike road shall and they are hereby required to put up or cause to be put up, and afterwards to be continued, at every toll gate within their respective districts, a table, painted in distinct and legible black letters, on a board with a white ground, containing at the top thereof the name of the gate at which the same shall be put up, and also a list of all the tolls payable at every such gate, distinguishing severally the total amount of tolls payable under any particular act or acts, and this and the said recited act, and the different sorts of carriages for which they are to be paid, where there shall be any variation therein, and also a list of the several gates which shall be wholly or partially cleared by the payment of toll at the toll gate or bar where such table of tolls shall be affixed; and the said

trustees or commissioners shall also provide tickets denoting the payment of toll, and on such several tickets shall be specified the name of the gate at which the same respectively shall be delivered, and also the names of the several gates freed by such payment, one of which tickets shall be delivered *gratis* to the person paying the toll; and on the production of such ticket at any gate or gates therein mentioned as being cleared as aforesaid by the payment of the toll at the gate where such ticket was delivered, the person producing the same shall pass through the gate or gates therein mentioned without paying any further or additional toll.

4 G.4. c.95.

Tickets denoting payment of tolls.

By stat. 3 *G.* 4. *c.* 126. § 39. If any person subject or liable to the payment of any of the toll or tolls under and by virtue of this or any other act of parliament for making, repairing, or maintaining any turnpike road, shall, after demand thereof made, neglect or refuse to pay the same, or any part or parts thereof, it shall be lawful for the person or persons authorised or appointed to collect such tolls, by himself or themselves, or taking such assistance as he or they shall think necessary, to seize and distrain any horse, beast, cattle, carriage, or other thing, upon or in respect of which any such toll is imposed, together with their respective bridles, saddles, gears, harness, or accoutrements, (except the bridle or reins of any horse or other beast, separate from the horse or beast), or any carriage in respect of the horses or cattle drawing the carriage on which such toll is imposed, or any of the goods or chattels of the person or persons so neglecting or refusing to pay; and if the toll, or any part thereof, so neglected or refused to be paid, and the reasonable charges of such seizure and distress shall not be paid within the space of *four* days next after such seizure and distress made, the person or persons so seizing and distraining may sell the horse, beast, cattle, carriages, or things so seized and distrained, or a sufficient part thereof, returning the overplus of the money to arise by such sale (if any) and what shall remain unsold, upon demand, to the owner thereof, after such tolls and the reasonable charges occasioned by such seizure, distress, and sale, shall be deducted.

3 G.4. c.126. For recovery of tolls.

See 10 East, 104.

Collector may distrain.

If toll and charges be not paid in four days, distress may be sold.

§ 40. If any dispute shall happen or arise about the amount of the tolls due, or the charges of making, keeping, or selling any distress made for non-payment of any tolls, it shall be lawful for the collector, or the person distraining, to retain such distress, or the money arising from the sale thereof (as the case may be), until the amount of the tolls due and the charges of the making, keeping, and selling the distress be ascertained by some justice of the peace for the county, division, or place wherein the turnpike or toll gate at which the toll in dispute shall be payable shall or may be situate, who, upon application made to him for that purpose, shall examine the matter on the oath of the parties or other witness or witnesses (which oath such justice is hereby authorised and empowered to administer), and shall determine the amount of the tolls due, and shall award such costs and charges to either party as to the said justice shall appear right and proper; all which costs and charges shall and may be levied and recovered, in case of non-payment thereof forthwith, by distress and sale of the goods and chattels of the person or persons so awarded or directed to pay the same, by warrant under the hand and seal of such justice, rendering the overplus (if any) upon demand, after de-

Any justice may settle disputes concerning tolls.

3 G.4. c.126.

ducting the costs and charges of making such distress and sale, to the person or persons whose goods and chattels shall have been so distrained and sold.

Penalty not exceeding *5l.* for evading tolls.

§ 41. If any person shall with any horse, cattle, beast, or carriage, go off or pass from any turnpike road, through or over any land or ground near or adjoining thereto, (not being a public highway, and such person not being the owner or occupier, or servant or one of the family of the owner or occupier of such land or ground) with intent to evade the payment of the tolls granted by any act of parliament; or if any owner or occupier of any such land or ground shall knowingly or willingly permit or suffer any person, (except as aforesaid), with any horse, cattle, beast, or carriage whatsoever, to go or pass through or over such land or ground with intent to evade any such tolls; or if any person shall give or receive from any person other than the collectors of the tolls, or forge, counterfeit, or alter any note or ticket directed to be given, with intent to evade the payment of the tolls, or any part thereof: or if any person shall fraudulently or forcibly pass through any such toll gate with any horse, cattle, beast or carriage; or shall leave upon the said road any horse, cattle, beast, or carriage whatsoever; by reason whereof the payment of any tolls or duties shall be avoided or lessened; or shall take off, or cause to be taken off, any horse or other beast or cattle from any carriage, either before or after having passed through any toll gate, or having passed through any toll gate shall afterwards add or put any horse or other beast to any such carriage, and draw therewith upon any part of any turnpike road, so as to increase the number of horses or other beasts drawing the said carriage after the same shall have passed through any toll gate, whereby the payment of all or any of the tolls shall or may be evaded; or if any person shall do any other act whatever in order or with intent to evade the payment of all or any of the tolls, and whereby the same shall be evaded, every such person shall for every such offence forfeit any sum not exceeding *5l.*

§ XVI. Composition for Tolls — Reduction or Advance.

[3 G. 4. c. 126. § 43, 44.—4 G. 4. c. 95. § 13.]

4 G.4. c.95. Composition may be made for tolls for one year.

By stat. 4 *G.* 4. *c.* 95. § 13. The trustees and commissioners of every turnpike road may, and they are hereby empowered from time to time, as they shall see convenient, to compound and agree, for any term not exceeding one year at any one time, with any person or persons, for the tolls payable for any horses, cattle, or beasts, or carriages, passing through any of the turnpikes or toll gates of the road under their care and management, and collected and taken under the authority of the particular act or acts in execution of which the trustees or commissioners making such composition shall act, or of the said recited act or this act.

3 G.4. c.126. Trustees may reduce tolls; See Form (No. 7.)

By stat. 3 *G.* 4. *c.* 126. § 43. It shall and may be lawful for the trustees or commissioners appointed in and by virtue of any act of parliament for the repairing and amending any turnpike roads, in case no power or effectual power should be given to them under

the act by which they are appointed, and they are hereby empowered, at a meeting to be held for that purpose (of which one calendar month's notice shall be given in writing, to be affixed on all turnpike gates which shall be then erected upon such roads, and in some public newspapers circulated in that part of the country), from time to time to lessen and reduce all or any of the tolls granted by any of the said respective acts, for and during such time as the said trustees or commissioners shall think proper; and afterwards, at any meeting to be held as aforesaid, from time to time, as they shall see occasion, to advance all or any of the tolls so lessened to any sum or sums of money not exceeding the several rates granted by such acts of parliament and this act respectively: provided nevertheless, that where the whole money borrowed on the credit of the tolls granted by any such act shall not have been paid and discharged, no such tolls shall be lessened or reduced without the consent of the person or persons entitled to five-sixths of the money remaining due upon such respective tolls.

3 G.4. c.126.

and afterwards advance them.

Reduction not to be made without consent of creditors in certain cases.

§ 44. In all cases where the trustees or commissioners of any turnpike road shall reduce or advance the tolls on the road or roads for which they shall act, such reduction or advance shall be made as to waggons, carts, and other carriages, the breadth of the wheels whereof is regulated by this act, with reference to the proportion or scale of tolls payable on such waggons, carts, or other carriages, according to the breadth of the wheels thereof; (that is to say), the trustees or commissioners making the reduction or advance, shall reduce or advance the toll payable on waggons, carts, or other such carriages, having the fellies of the wheels thereof of the breadth of six inches, and shall then take and demand double or other proportions (as the case may be) of such reduced or advanced tolls on waggons, carts, or other carriages, having the fellies of the wheels thereof of a greater or less breadth than six inches; and the reduction or advance of the proportion of toll to be payable by this or any other act, in respect of the breadth of wheels, or any other reduction or advance of tolls, to be made in any other way than in manner aforesaid, shall be null and void to all intents and purposes whatsoever.

Reduction or advance of tolls to be made proportionably.

§ XVII. Erecting Toll Gates.

[3 G. 4. c. 126. § 45, 46.]

By stat. 3 *G.* 4. *c.* 126. § 45. It is enacted, that no toll gate shall hereafter be erected on the side of any turnpike road, unless the same be ordered by the trustees or commissioners at a meeting of which 14 days' public notice shall have been given in writing affixed upon all the toll gates erected on such road within ten miles of the place where such intended gate is to be erected, and within the trust for erecting the same, and also in some public newspaper circulated in that part of the country, specifying the place where such toll gate is proposed to be erected, and unless five trustees or commissioners at least shall sign the said order at such meeting.

3 G.4. c.126.

Restriction as to the erecting toll gates on the sides of turnpike roads.

See Forms (No. 4. and No. 5.)

§ 46. If the trustees or commissioners appointed to put any act made for the repair of any turnpike road into execution, shall

If trustees cause gates to

3 G. 4. c. 126.

be erected contrary to any act of parliament, justices may order them to be removed.

exceed their power by erecting or continuing any gate or gates, turnpike or turnpikes, where they have not any power, by virtue of any act of parliament, to erect such gate or gates, turnpike or turnpikes, it shall and may be lawful for the justices of the peace for the limit where any such gate or gates, turnpike or turnpikes, is or shall be erected or continued, in their general quarter session assembled, upon complaint of such excess of power in such trustees, in a summary way to hear and determine whether such power has been exceeded, and if such power has been exceeded, to order the sheriff of the county, who is hereby authorised and required to execute such order, to remove any such gate or gates, turnpike or turnpikes.

§ XVIII. Farming the Tolls.

[3 G. 4. c. 126. § 55. 57, 58.—4 G. 4. c. 95. § 52, 53, 54.]

3 G. 4. c. 126. Powers for trustees or commissioners to farm out the tolls.

By stat. 3 *G.* 4. *c.* 126. § 55. It is enacted, that it shall and may be lawful for the trustees or commissioners of every turnpike road, at a public meeting, to let to farm the tolls of the several gates erected upon their respective turnpike roads, in the manner hereinafter mentioned, although no express power shall have been given by any act or acts for that purpose; and that whenever any tolls shall hereafter be let to farm by virtue of the powers given by this or any other act or acts, the following directions shall be observed; (that is to say), the trustees or commissioners shall cause notice to be given of the time and place for letting the same, at least one month before the day to be appointed for that purpose, by affixing the same upon every toll-gate belonging to such turnpike road, and also by insertion thereof in some public newspaper circulated in that part of the country, and specifying in every such notice the sum which the said tolls produced in the preceding year, clear of the salary for collecting the same, in case any hired collector was appointed, and that they will let such tolls by auction to the best bidder, on his producing sufficient sureties for payment of the money monthly, or otherwise (as in such notice shall be specified), and that they will be put up at the sum which they were let for or produced in the preceding year, clear of the salary of the collector; and to prevent fraud or any undue preference in the letting thereof, the trustees or commissioners are hereby required to provide a glass with so much sand in it as will run from one end of it to the other in one minute, which glass, at the time of letting such tolls, shall be set upon a table, and immediately after every bidding the glass shall be turned, and as soon as the sand is run out it shall be turned again, and so for three times, unless some other bidding intervenes, and if no other person shall bid until the sand shall have run through the glass three times, the last bidder shall be the farmer or renter of the said tolls, and shall forthwith enter into a proper agreement for the taking thereof, and paying the money at the times specified in such notice, with such surety or sureties for payment thereof, and under such conditions and in such manner as the said trustees or commissioners shall think fit; and if the person being the last bidder shall not forthwith enter into such agreement, it shall and may be lawful to put up the said tolls again immediately for another bidder, and in like manner to continue

Notice to be given for letting the tolls. See Form (No. 6.)

Tolls to be put up at the sum produced the preceding year.

Mode of receiving biddings.

putting up the same until a bidder shall be found who shall enter into such agreement; and in case no bidder shall offer, or in case the same shall not be let at such auction, it shall be lawful for the said trustees, or commissioners, to accept a private tender for the same, and to demise or let to farm, or agree to demise or let to farm, all or any of such tolls, at any sum not less than the sum at or for which they shall then have been last let; or the said trustees or commissioners may appoint a collector of such tolls, or fix some future day for the letting thereof, as they shall judge most proper, upon giving such notice thereof as aforesaid, and shall and may in that case put them up at such sum as they shall think fit: and if the person or persons who shall be the farmer or renter, or collector or collectors of such tolls shall take a greater or less toll from any person or persons than what is authorised or directed by this or the particular turnpike act, he or they shall, for every such offence, forfeit the sum of *5l.*, and the said agreement for renting the tolls shall, if the said trustees or commissioners shall think fit to vacate the same, become and be null and void: provided always, that at all such lettings the trustees or commissioners shall be entitled to bid for the tolls so to be let, either by themselves or their clerk or treasurer, or any other person by them authorised; provided also that no such tolls shall be demised or leased for any longer term than three years at any one time. (*a*)

3 G.4. c.126.

If tolls be not let at such auction, a private tender may be accepted.

Penalty on collectors taking more or less than the authorised toll, *5l.*

Limiting leases to three years.

By stat. 4 *G.* 4. c. 95. § 52. It shall be lawful for the trustees or commissioners of any turnpike road, under and subject to the directions and provisions of stat. 3 *G.* 4. *c.* 126., and this act, to let to farm, or agree to let to farm, all or any part of the tolls of the several gates erected upon their respective roads, and all or any of the said gates, either together and in one lot, or by parcels and in several lots; and in case the said trustees or commissioners shall at any time let to farm the said tolls in parcels or lots, it shall be lawful for the said trustees or commissioners to put up each such parcel or lot at such sum as they shall think fit.

4 G.4. c.95. Tolls may be let in lots.

§ 53. When the trustees or commissioners of any turnpike road shall put up the tolls to let to farm, the said trustees or commissioners may, if they think fit, appoint some person to bid for the same on their account, to the intent that such tolls may not be let for less than an adequate value.

Trustees may appoint some person to bid at letting of tolls.

§ 54. After reciting, that whereas in some situations a toll-gate or bar, belonging to trustees or commissioners of one road, is placed so near to the gate or bar of the trustees or commisssioners of another road, as to be inconvenient to the respective trusts, and to the public; it is enacted, that it shall be lawful for the trustees or commissioners of any turnpike road, if they shall agree thereto, at any public meeting to be holden for that purpose, to take to farm the tolls payable at any toll-gate or bar of any other road adjoining or near to the road under their care and management; and the trustees or commissioners so farming the tolls may collect

Tolls of another trust adjoining may be farmed.

(*a*) Though the forms of the act have not been strictly complied with, and the renter is illegally appointed, he may yet recover, on an account stated, tolls for which he has given credit; no objection being made by the trustees, and the party to whom the credit was given, having, by his own acts, acknowledged the state of the account. *Peacock* v. *Harris*, 10 *East*, 104.

3 G. 4. c. 126.

and receive the same, or may reduce the said tolls so farmed, or may discontinue the same, as they shall see fit.

Contracts and agreements to be valid when signed by the trustees, &c.

By stat. 3 *G.* 4. *c.* 126. § 57. All contracts and agreements to be made or entered into for the farming or letting the tolls of any turnpike roads, signed by the trustees or commissioners letting such tolls, or any two or more of them, or by their clerk or treasurer, and the lessee or farmer, and his sureties, of such tolls respectively, shall be good, valid, and effectual to all intents and purposes, notwithstanding the same may not be by deed or under seal.

Lessees of tolls may appoint persons to receive the same, who shall be subject to the like penalties as collectors appointed by the trustees.

§ 58. During such time as the tolls, or any part or parts thereof, shall be leased to any person or persons whomsoever, it shall be lawful for the lessee or lessees, farmer or farmers thereof, or such other person or persons as he, she, or they shall, by writing or writings under his, her, or their hand or hands, authorise or appoint, to demand and take such tolls so leased, demised, or farmed, and to use all such means and methods for the recovery thereof, in case of non-payment or evasion, as any collector of such tolls appointed under or by virtue of any act of parliament for the making of turnpike roads, or by this act, is authorised and empowered to use; and such lessee or lessees, farmer or farmers, or other person or persons as aforesaid, so demanding and taking such tolls, shall be subject to the like pains, penalties, and forfeitures, and shall be liable to the like actions and prosecutions as any collector of such tolls appointed by the trustees or commissioners is subject or liable to.

§ XIX. Property of Toll-Houses vested in Trustees.

[3 G. 4. c. 126. § 60. — 4 G. 4. c. 95. § 57, 58, 59.]

The property of toll-houses, &c. vested in trustees.

By stat. 3 *G.* 4. *c.* 126. § 60. It is enacted, that the right, interest, and property of and in all the toll-gates and toll-houses, weighing-machines, and other erections and buildings, lamps, bars, toll-boards, direction-boards, mile-stones, posts, rails, fences, and other things which shall have been or shall be erected and provided in pursuance of any act of parliament for making turnpike roads, with the several conveniences and appurtenances thereunto respectively belonging, and the materials of which the same shall consist, and all materials, tools, and implements which shall be provided for repairing the said roads, and the scrapings of the said roads, shall be vested in the trustees or commissioners acting in pursuance of such act for the time being, and they are hereby authorised and empowered to apply and dispose of the same as they shall think fit, and to bring or cause to be brought any action or actions, and to prefer and prosecute, or order and direct the preferring and prosecuting of any informations or indictments, against any person or persons who shall dig up, break, or pull down, steal, take, or carry away, spoil, destroy, injure, or damage any of the toll-gates, or toll-houses, weighing-machines, or other erections or buildings, lamps, bars, toll-boards, direction-boards, mile-stones, posts, rails, fences, and other things, or any of the conveniences and appurtenances thereto belonging, or any of the tools, implements, or materials aforesaid, or shall interrupt them, the said trustees or commissioners, or any of their officers, in the posses-

Scrapings of road.

Actions may be brought in the name of the clerk.

sion thereof; in all which proceedings it shall be sufficient to state generally such articles to be the property of the clerk for the time being to the said trustees or commissioners. 3 G. 4. c. 126.

4 G. 4. c. 95. Where toll-houses are not wanted they shall be pulled down and the materials sold.

By stat. 4 *G.* 4. *c.* 95. § 57. Where any toll-house or toll-houses standing on or adjoining any turnpike road, and which shall have been erected by or vested in the trustees or commissioners of such road, shall become useless, and be no longer required for the purposes of such road, it shall not be lawful for the trustees or commissioners of such road to sell or dispose of such toll-house or toll-houses, but in every such case the trustees or commissioners of the road on which such toll-house or toll-houses no longer required shall stand, shall cause such toll-house or toll-houses, with the outhouses attached or belonging thereto, to be pulled down, and the materials thereof to be sold or removed, and the site of such toll-house or toll-houses so pulled down, together with the gardens and appurtenances thereunto belonging, may then be sold by the said trustees or commissioners, in the same manner as and under the regulations in the said recited act and this act contained, with respect to any land or ground not wanted for the purposes of the road.

Lessees, or persons appointed by them, may occupy toll-houses.

§ 58. During such time as the tolls arising on any turnpike road, or any part or parts thereof, shall be leased, demised, or let to any person or persons whomsoever, it shall and may be lawful to and for the lessee or lessees, or farmer or farmers thereof, or such other person or persons as he or they shall authorise or appoint, to occupy and enjoy the toll-house or toll-houses at which the said tolls so let are to be collected and to arise, with all the appurtenances and conveniences to the same toll-house or toll-houses belonging, for the purpose of collecting such tolls, during so long time only as such lessee or lessees, farmer or farmers, shall duly and regularly pay his, her, or their rent or rents, and perform the covenants, agreements, and conditions of such lease, demise, or letting, but no further or otherwise.

Enabling the trustees to take possession of the toll-house, &c. when let to farm, or held by the collectors for the trustees, in default of performance of conditions, &c.

§ 59. In case all or any of the tolls arising by virtue of any act for repairing or amending any turnpike road shall have been or shall be demised or let to farm to any person or persons, in any manner whatsoever, and the lessee or lessees, farmer or farmers thereof, shall neglect or refuse to perform the terms and conditions on which the same shall have been or shall be so demised or let; or in case the rent or rents agreed to be paid by such lessee or lessees, farmer or farmers, shall be in arrear by the space of seven days next after any of the days on which the same ought to be paid, pursuant to the agreement for letting to farm thereof; or in case any such lease or agreement shall in any other manner become void; then and in any of those cases it shall and may be lawful for any justice of the peace for the county or place, by warrant under his hand and seal, to order a constable or other peace officer, with such assistance as shall be necessary, to enter upon and take possession of any toll-house or toll-houses, toll-gate, bar or chain, or weighing machine, and the buildings and appurtenances thereto belonging, and to remove and put out such lessee or lessees, farmer or farmers of the tolls arising thereat respectively, or other person or persons who shall be found therein, together with his, her, or their goods, out of and from the possession of the said toll-house or toll-houses, and from the collection of

4 G.4. c.95. tolls, and to put the said trustees or commissioners, or any one of them, or their new appointed officer, or other person acting by or under their authority, into the possession thereof; and thereupon it shall be lawful for the said trustees or commissioners (if they shall think fit) to vacate and determine the contract or agreement (if any) for demising or letting the said tolls to such lessee or lessees, farmer or farmers, and the same shall be from that time utterly void to all intents and purposes (save as to the covenants or agreements for payment up to that time of the rent or rents thereby reserved, or other covenants or agreements on the lessee's part which shall have been holden) as if such demise or agreement had never been made; and it shall be lawful for the said trustees or commissioners in every such case to demise or let to farm the said tolls again to any other person or persons, or cause them to be collected, as if no former demise, contract, or agreement had been made relative thereto.

§ XX. Statute Duty and other Labour.

[3 G. 4. c. 126. § 105, 106, 107, 108, 109. — 4 G. 4. c. 95. § 77. 80. 81, 82.]

Regulations as to statute labour.

By stat. 4 *G.* 4. *c.* 95. § 80. "All persons who by law are or shall be liable to do statute work, or are or shall be chargeable towards the repairing and amending any turnpike road, shall be and remain liable thereto, in like manner in every respect as they now are or have heretofore been; and it shall be lawful for any two or more justices of the peace in and for the county, city, or place in which any such turnpike road shall lie or be situate, and they are hereby required and empowered, upon application made to them by any three or more of the trustees or commissioners of such turnpike road, or by their clerk or surveyor, yearly to adjudge and determine what part or proportion of the statute work shall every year be done upon such road by the inhabitants of the respective parishes, hamlets, and places in or through which the said road doth or shall lie, lead, or pass, and also what proportion of the money received by the surveyor or surveyors of the highways of every such parish, hamlet, or place, in lieu of or as a composition for such statute-work (*a*) as aforesaid, shall be by him, her, or them paid to the said trustees or commissioners, or their treasurer or treasurers; and in order thereunto the surveyor or surveyors of the highways for every such parish, hamlet, or place, shall, on an order in writing (No. 9.) made by the said justices, on an application to them by the trustees or commissioners of the turnpike road, or any three or more of them, or by their clerk or surveyor, and respectively delivered to such surveyor or surveyors of the highways, or left at his or their last or usual place of abode, bring and deliver, within ten days afterwards, to the said turnpike surveyor, or to his place of abode, true and perfect lists in writing (No. 25.), of the names of the several persons who, within such parish, hamlet, or place are by law subject and liable to do statute work for that year, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts, or otherwise, and also the amount of the respective sums to be paid; which lists of names

(*a*) See stat. 54 G. 3. c. 109. § 4. *ante*, p. 833. See also *Stanley* v. *Fielden and others*, ante, p. 834.

(No. 9.)

(No. 25.)

shall be made in such manner and under such regulations and restrictions as are or may be directed by any law or statute in force or effect for the repairs of the public highways, and may be made in the form specified in the schedule to this act; and the said turnpike surveyor, having received such lists, shall, within fourteen days afterwards, give a notice (No. 10.) to the surveyor or surveyors of the highways, of the time when such lists will be laid before the said justices, in order to apportion the said statute-duty; and at the time appointed in and by such notice the said lists shall be laid before the said justices by the said turnpike surveyor, in the presence of the said surveyor of the highways (if he shall attend), and out of such lists the said justices shall and may allot, appoint, and order (No. 11.) such and so many of the persons who shall appear to be subject and liable to do statute work in every year upon such road, as the said justices shall think reasonable, and the same shall be done on such days, and at such time (not being hay-time or harvest), and on such parts of the said road, as the said trustees or commissioners, or their surveyor or surveyors, shall from time to time order, direct, or appoint; and the said justices shall and may order (No. 11.) and direct the surveyor or surveyors of such parishes, hamlets, and places respectively to pay over to the said trustees or commissioners, or their treasurer, or other person duly authorised to receive the same, such proportion of the composition money for statute work as aforesaid as they the said justices shall think proper, and at such time or times as the said justices shall direct; and each and every person who shall neglect or refuse to do such statute work as aforesaid, after notice in writing given to or left for him, her, or them at his, her, or their last or usual place or places of abode for that purpose, by any surveyor to the said trustees or commissioners, shall for every day of his, her, or their default, or the default of any labourer or labourers, team or teams, draught or draughts, horse or horses, beast or beasts, to be provided by him, her, or them, be subject and liable to such fines, penalties, and forfeitures as such person or persons may be subject or liable by any law or statute now in force or effect for repair of the public highways; and if any person who shall come to work as a labourer, or shall be sent with any team or draught to work on any part of such road, shall be found idle or negligent by any surveyor to the said trustees or commissioners, such surveyor is hereby empowered to remove and dismiss the person who shall be found idle or negligent as aforesaid; and in that case every such person shall be subject and liable to the respective forfeitures and payments as aforesaid, as if he had neglected or refused to come, or such team or draught had not been sent to work on any part of such road; all which forfeitures shall be paid to the treasurer to the said trustees or commissioners, and applied towards amending the said road; and in case the surveyor or surveyors of the highways for any of the said parishes, hamlets, or places shall refuse or wilfully neglect to give in any such lists as aforesaid, or shall knowingly or wilfully give in false and imperfect lists, or shall refuse or neglect to collect or pay over such composition money, or any part thereof, in manner aforesaid, every such surveyor so offending shall, for every such offence, forfeit and pay any sum not exceeding 10*l.*; and such composition money shall and may be recovered from such surveyor or surveyors of the highways, by

4 G.4. c.95.

(No. 10.)

(No. 11.)

4 G. 4. c. 95. distress and sale of his or their goods and chattels, by warrant under the hands and seals of any two justices of the peace for the county, city, or place where any such road shall lie or be situate."

Form of surveyors' list.

* (See Form No. 25.)

§ 77. After reciting that whereas the form of the list to be delivered to the surveyors of turnpike roads by the surveyors of the highways is omitted in the schedule to stat. 3 G. 4. c. 126; it is enacted, that the form given in the schedule to this act annexed marked (No. 2.*) shall be used for that purpose.

In case no highway surveyor shall be appointed, lists of persons liable to do statute work to be made out in manner herein directed.

§ 81. Where any turnpike road shall pass through any parish, township, or place liable to the repair of the roads within the same, but for which no surveyor of the highways shall be appointed, then and in every such case the churchwardens and overseers of the poor of such parishes, townships, and places respectively, and in cases where neither surveyor, churchwardens, or overseers of the poor shall be appointed, then such other inhabitant or inhabitants of such parish, township, or place as shall be thereto required by an order in writing made by the justices on application to them by the trustees or commissioners of the turnpike road, or by their clerk or surveyor, and respectively delivered to such churchwardens or overseers, or inhabitant or inhabitants, or left at his at their last or usual places of abode, shall deliver or cause to be delivered within ten days afterwards to the said turnpike surveyor, or to his place of abode, true and perfect lists in writing of the names of the several persons who within such parish, township, or place are by law subject and liable to do statute work for that year, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts, or otherwise, and also the amount of the respective sums to be paid; which lists shall be made and used, and dealt with in the manner directed by the said recited act and this act; and the statute work shall be ordered and adjudged by the justices, and enforced and required or compounded for, in the same way as if the said lists had been made and delivered by the surveyor of the highways, under the provisions and authorities of the said recited act and this act.

3 G. 4 c. 126. Statute work may be compounded for.

By stat. 3 *G.* 4. *c.* 126. § 105. It is enacted, that it shall be lawful for the trustees or commissioners of every turnpike road to compound and agree with any person or persons, bodies politic or corporate, for the repairs of statute work to be by him, her, or them done on any such turnpike road, and also with the surveyor or surveyors of the highways for any of the parishes, hamlets, or places in which the said road doth or shall lie and be situate, for a certain sum of money, by the year or otherwise, as the said trustees or commissioners shall think reasonable, in lieu of the whole or any part of the statute work or other work to be by all or any of the said inhabitants and occupiers done on the said road, [*which composition-money shall always be paid by the surveyor or surveyors of the highways, or other officer of the parish, hamlet, or place, or by the person or persons so compounding, to the treasurer of the trustees or commissioners in advance, on or before the 29th day of* September *in each and every year, or otherwise such person or persons, bodies politic or corporate, or in-*

habitants and occupiers within such parish, hamlet, or place, shall not be permitted to compound for that year;] and all such composition money shall be applied for the purposes of such turnpike road; and that every such surveyor of the highways who shall pay any such composition money shall be reimbursed the same in like manner as surveyors of the highways are by the laws in being to be reimbursed the money by them laid out and expended in buying materials for the repairing of any other highway or highways. 3 G.4. c.126.

By stat. 4 *G.*4. *c.*95. § 82. The words within brackets are repealed, and it is enacted, that all composition money in lieu of statute duty shall be paid by the person or persons compounding, to the treasurer of the trustees or commissioners, at such time or times, and in such manner, as shall be agreed upon at the entering into such composition.

4 G.4. c.95. Instead of compositions for statute work being paid by Sept. 29, yearly, such composition shall be paid according to agreements.

By stat. 3 *G.*4. *c.* 126. § 106. It is enacted, that it shall and may be lawful for the trustees or commissioners of any turnpike roads to contract and agree with any person or persons liable to the repair of any part of the road under the care and management of such trustees or commissioners, or of any bridges thereon, by tenure or otherwise, for the repair thereof, for such term as they shall think proper, not exceeding three years, and to contribute towards the repair of such road or bridges such sum or sums of money as they shall think proper out of the tolls arising on such turnpike road. See Form (No. 8.)

3 G.4. c.126. Trustees may contract with persons liable to the repairs of roads by tenure.

§ 107. And whereas many bridges on turnpike roads are by prescription at present liable to be repaired by certain parishes, and not by the county or counties in which they are situated, and which bridges from change of times and circumstances are become no longer sufficiently convenient for the use of the public without being enlarged or otherwise improved; it is therefore enacted, that it shall and may be lawful for any such county or counties, parish or parishes respectively, to enter into a composition or agreement with each other, and by the authority of those persons who shall be legally competent to make rates for such county and parish respectively, whereby the improvement and future repair of any such bridge shall be undertaken and lie upon the county or counties in which such bridge is locally situated; and all rates made for carrying into effect any such composition, agreement, repairs, or improvement, shall be made and assessed in the same manner as other the rates of such county or parish respectively, and shall be good and valid to all intents and purposes in the law whatsoever. Vide Vol. I. tit. Bridges.

Composition may be entered into by counties for repairing bridges repaired by parishes.

§ 108. It shall and may be lawful for the trustees or commissioners of any turnpike road, and for such parish or parishes, in like manner to enter into a composition or agreement with each other, and by the authority of the persons at present legally competent to make rates for such parish or parishes, whereby in consideration of such sum or sums of money as shall be agreed upon being yearly paid to the treasurer of the trustees or commissioners entering into such composition or agreement, out of the rates to be raised for the repair of the bridge or bridges the subject thereof, the repairs of any such bridge shall, during the continuance of any act or acts of parliament under which such trustees or commissioners shall be appointed or act, be undertaken and

Compositions may be entered into by trustees and parishes for repair of bridges.

3 G. 4. c. 126.

carried on by the said trustees or commissioners; and all rates and assessments raised and levied for carrying such composition or agreement into effect, shall, in like manner, be good and valid to all intents and purposes whatsoever.

Where the repairs and revenues of a turnpike road shall be such as that statute labour will not be required for such road, justices may dispense with it.

§ 109. "And whereas there are or may be turnpike roads in such a state and condition with regard to their repairs and the revenues arising upon them, that the statute duty required to be performed upon the same may be in the whole or in part dispensed with, and employed more advantageously for the benefit of the other public highways within the parish, township, or place liable to the performance of such duty;" it is enacted, "that it shall and may be lawful for the justices of the peace at any special sessions, upon application to them made by the surveyor of the highways, or by any two inhabitants of any parish, township, or place, to summon before them the clerk and surveyor of any turnpike road, within such parish, township, or place alleged to be in the situation before described, and then and there to produce before them a state of the revenues and debts of such turnpike road, and for such justices to inquire into the state and condition of the repairs thereof, and also of the repairs of such other highways; and if it shall appear to the said justices, upon full and clear evidence, that the whole or any part of such statute duty may be conveniently dispensed with from such turnpike road, without endangering the securities for the monies advanced upon the credit of the tolls thereof, and that such statute duty is wanted for the repairs of the other highways within such parish, township, or place, then and in that case it shall and may be lawful for the said justices to order the whole or part of such statute duty to be performed upon the highways not being turnpike within such parish, township, or place, under the direction of the surveyor thereof, during such time as to them shall seem reasonable, and the same shall be performed accordingly." (Nos. 12. 13.)

§ XXI. Apportionment of Fine on Indictment for Non-repair.

[3 G. 4. c. 126. § 110.]

Where parish indicted for non-repair of a turnpike road, the court to apportion the fine between the parish and the trustees or commissioners.

By stat. 3 *G.* 4., *c.* 126. § 110. It is enacted that when the inhabitants of any parish, township, or place shall be indicted or presented for not repairing any highway being turnpike road, and *the court before whom such indictment or presentment shall be preferred* shall impose a fine for the repair of such road, such fine shall be apportioned, together with the costs and charges attending the same, between the inhabitants of such parish, township, or place, and the trustees or commissioners of such turnpike road, in such manner as to the said court, upon consideration of the circumstances of the case, shall seem just; and it shall and may be lawful for such court to order the treasurer of such turnpike road to pay the sum so proportioned for such turnpike road out of the money then in his hands or next to be received by him, in case it shall appear to such court, from the circumstances of such turnpike debts and revenues, that the same may be paid without endangering the securities of the creditors who have advanced their money

upon the credit of the tolls to be raised thereupon, which order shall be binding upon such treasurer, and he is hereby authorised and required to obey the same. 3 G. 4. c. 126.

The true construction of this section is, that the court which imposes the fine shall have power to apportion it between the parish and the trust; so that where an indictment was originally preferred at the assizes, and afterwards removed into the court of K. B. by *certiorari*, it was held that the court of K. B. might apportion the fine. *R.* v. *Upper Papworth*, 2 *East*, 413.

On a turnpike road being out of repair, the remedy is by indictment or presentment against the inhabitants of the parish or township within which it is situated. This has been complained of as a defect in the system, and a considerable hardship on the parishioners, and with some reason. The superintendence of the road, and of the repairs of it, is taken from them and transferred to the trustees, to whom powers are given to raise, by the collection of tolls, funds over which the parish have no check or controul. In case of misapplication or of improper or wasteful expenditure, they have no power of calling for an account; and although the inhabitants may see the road going to decay, their remedies to compel the trustees to do their duty are doubtful, if indeed any exist. No instance is found of an indictment or presentment against trustees, and it seems taken for granted that they are not amenable to this process. Vide per *Abbott* C. J., *Rex* v. *Netherthong*, 2 *B. & A.* 183.

Where a local act for the making a public highway directed the trustees to repair the same with the monies arising from the tolls; the court of K. B. held that this did not discharge the inhabitants of the township, through which a part of it was carried, from the common-law liability to repair; the public having a right to hold them liable, whether the road was altogether new or substituted for another. The tolls are only an auxiliary fund; the trustees are not indeed liable to an indictment, but the inhabitants may apply to the court for relief. *R.* v. *Inh. of Netherthong*, 2 *B. & A.* 179.

The parishioners, as a body, have no fund on which the expences of proceedings against trustees can be charged, and are in this case of indicting turnpike roads, made criminally responsible for the neglect of others, without any means of preventing the mischief. *See Dehany's Observations on the General Turnpike Acts*, p. 89.

§ XXII. Causeways — Ditches — Drains.

[3 G. 4. c. 126. § 111, 112, 113. 115. 4 G. 4. c. 95. § 67.]

Power to make causeways.

By stat. 3 *G.* 4. *c.* 126. § 111. It is enacted, that it shall be lawful for the trustees or commissioners to make and keep in repair, or cause to be made and kept in repair, any causeway or causeways for the use of foot passengers in, upon, or on the sides of the turnpike road in such manner as they shall think proper; and also to make or cause to be made a road through the grounds adjoining to any ruinous or narrow part of any turnpike road (not being the site or ground whereon any house or houses stand, nor being a yard, garden, park, paddock, planted walk or avenue to any house, or any inclosed ground planted and set apart as a nursery for trees), to be made use of by all passengers, cattle, and carriages,

Where turnpike road is ruinous, roads may be made through adjoining grounds.

3 G.4. c.126.

as a public highway, whilst the old road is repairing or widening, and till such time as it shall be convenient for passengers and carriages to pass along the same, making such recompence to the owners and occupiers of such private grounds for the damages they shall or may thereby sustain, as shall be adjudged reasonable by the trustees or commissioners of the road under repair or alteration; and in case of any difference concerning such damages between such owners or occupiers and such trustees or commissioners, then it shall and may be lawful for any two or more justices of the peace acting in and for the county wherein such grounds shall be situate, on 14 days' notice in writing being given by either party to the other, to settle, adjudge, and finally determine what recompence shall be made to such owners and occupiers, for the damage they shall have sustained as aforesaid.

Recompence to be made to owners for damages.

In case of difference two justices shall settle it.

§ 112. Nothing herein contained as to the making or maintaining any causeway or footpath, or any other matter or provision in this act, shall extend or be deemed or construed to extend to authorise or empower any trustees or commissioners of any turnpike road to lay down, continue, repair, or maintain any pavement, or any paved or pitched causeway or footpath, in or upon or at the side of any turnpike road within any town, village, or hamlet where such turnpike road shall pass through the same, unless provision shall have been or shall be specially made for that purpose in the act or acts of parliament under which such turnpike road shall be made, maintained, or repaired; but in default of such provision all and every such pavement, paved or pitched causeway or footpath, within such town, village, or hamlet shall be made, repaired, and maintained, by and at the costs of the inhabitants of such town, village, or hamlet, or by such other persons as shall be in anywise liable to make, maintain, and repair the same.

Trustees not empowered to repair causeways unless specially authorised.

§ 113. Enacts, that ditches, drains, or watercourses of a sufficient depth and breadth, for the keeping all turnpike roads dry, and conveying the water from the same, shall be made, scoured, cleansed and kept open, and sufficient trunks, tunnels, plats, or bridges, shall be made and laid where any carriageways, or footways lead out of the said turnpike roads into the lands or grounds adjoining thereto, by the occupier or occupiers of such lands or grounds; and every person or persons who shall occupy any lands or grounds adjoining to or lying near such turnpike road through which the water hath used to pass from the said turnpike road shall and is and are hereby required, from time to time as often as occasion shall be, to open, cleanse, and scour the ditches, watercourses, and drains for such water to pass without obstruction; and every person making default in any of the matters or things aforesaid, after ten days' notice to him, her, or them given, shall for every such offence forfeit any sum not exceeding *5l.*

Ditches, &c. of sufficient depth and breadth shall be made by the occupiers of lands for keeping the roads dry.

Penalty on default not exceeding *5l.*

§ 115. Enacts, that in all cases, where any gutter, drain, sink, sewer, or underdrain made or hereafter to be made under or at the sides or near any turnpike road, shall be used as well for the conveyance of the water from such turnpike road, as for conveying water, filth, or other matters from the houses or premises of the inhabitants of any town, hamlet, village, street, or place, and no specific mode of repair, or persons liable to the expenses of maintaining the same shall be appointed, the expence of maintain-

Expenses of repairing drains &c. in towns to be defrayed equally between the trustees and the inhabitants.

ing and repairing such gutter, drain, sink, sewer, or underdrain, shall be borne and defrayed equally or in proportions by the trustees or commissioners of such turnpike road, and the inhabitants of the town, hamlet, village, street, or place, using the same; and in order to ascertain the proportion, and recover such expences, the surveyor of the turnpike road under or at the sides, or near to which such gutter, drain, sink, sewer, or underdrain shall be situated, shall as often as shall be requisite repair the same, and shall then make out an account of the costs and expences of such reparation, and produce the same to any two or more justices of the peace acting for the county or place where such gutter, drain, sink, sewer, or underdrain, or so much thereof as shall be repaired shall lie; and it shall and may be lawful for the said justices, and they are hereby authorised and empowered, to examine the accounts and statements to be produced to them, and to inquire as to the persons using such gutter, drain, sink, sewer, or underdrain, and to proportion the amount to be paid by the trustees or commissioners of the turnpike road, and by the inhabitants and persons using such gutter, drain, sink, sewer, or underdrain respectively, and to fix and ascertain the amount of such proportion as they the said justices shall deem just and reasonable, to be paid by the said several parties respectively; and if any person or persons shall neglect or refuse to pay the sum directed by the said justices to be paid by him, her, or them, the same shall be levied by distress and sale of the goods and chattels of the person or persons so neglecting or refusing, by a warrant under the hands and seals of any two or more justices of the peace, acting for the county or place where such person or persons shall reside.

3 G.4. c.126.

An account of the expence of repairs to be laid before two justices, who shall proportion the amount to be paid by the parties.

By stat. 4 *G.* 4. *c.* 95. § 67. It is enacted, that it shall be lawful for the surveyor and surveyors, and such other person and persons as shall be appointed by the trustees or commissioners of any turnpike road, from time to time to cut, make, or maintain drains or watercourses upon and through any lands lying contiguous to any such road, and also to make ditches in such places and in such manner as such surveyor and surveyors, by order of such trustees or commissioners, shall judge necessary; and make sufficient fences and barriers, and other erections, on any part or parts of the said road, in order to prevent any rivulet or current of water from flooding the same, as such surveyor or surveyors shall judge necessary; making such satisfaction to the owners or occupiers of such lands so to be used, cut through, or built upon, for the damages which they or any of them may sustain thereby, as such trustees or commissioners shall judge reasonable; and in case of any difference between such owners or occupiers and such trustees or commissioners, touching such damages, the same shall be finally settled by any two or more justices of the peace for the county, city, or place in which such road shall lie or be situate. (*a*)

4 G.4. c.95. Surveyors may make drains, &c.

(*a*) A turnpike act authorised the trustees or surveyor amongst other things to cut any watercourses "in, through, or across any lands or grounds, in order to drain or prevent the roads from being overflowed, &c. making such reasonable satisfaction to the owners or occupiers of such grounds as to the said trustees should seem reasonable." Under this authority a drain was cut in pursuance of a plan which had been approved of by a surveyor; the order by which the drain

§ XXIII. Annoyances to be removed.

[3 G. 4. c. 126. § 114. 118. — 4 G. 4. c. 95. § 72.]

3 G. 4. c. 126. For removing and preventing annoyances.

By stat. 3 *G.* 4. *c.* 126. § 114. It is enacted, "that it shall be lawful for the surveyor of every turnpike road, and such person as he or they shall appoint, to remove and prevent all annoyances on every part of every turnpike road, by filth, dung, ashes, rubbish, or any other matter or thing whatsoever, being laid or thrown upon any turnpike road, or upon any open common or waste land within eighty feet of the centre thereof, and to dispose of the same for the benefit of such road, in case the owner thereof shall neglect to remove the same within 12 hours after notice in writing, signed by any two trustees, or the surveyor of such road, given to such owner for that purpose, or in case the owner is not known, then after a like notice affixed for three days on the nearest turnpike gate; and to turn any watercourses, sinks, or drains running into, along, or out of any turnpike road, or any part thereof, to the prejudice of the same, and to open, scour, and cleanse any watercourses or ditches adjoining to any turnpike road, and make the same as deep and large as he shall think proper and necessary, in case the owners or occupiers of the adjoining lands shall neglect to open, scour, or cleanse such watercourses or ditches after seven days' notice in writing given for that purpose; and the charges thereof, and of removing any annoyances to be settled by any one or more justices of the peace of the county or place where such part of the turnpike road shall lie, shall be reimbursed to the said surveyor by such owners or occupiers, and the same shall be recovered in such manner as the penalties and forfeitures are hereinafter directed to be recovered; and if after the removal of any of the said annoyances, any person shall again offend in the like kind, every such person shall, for every such offence, forfeit and pay any sum not exceeding *5l.*" See § 141, 142.

Penalty for a second offence, *5l.*

Persons making encroachments on the roads by reducing the breadth or narrowing the limits thereof; or making drains across or

§ 118. Enacts, that if any person shall make or cause to be made any dwelling house or other building, or any hedge or other fence on or at the sides of any turnpike road, in such manner as to reduce the breadth or confine the limits thereof, or shall fill up or obstruct any ditch at the side thereof; or shall make or cause to be made any dwelling house or other building, or any hedge or other fence on any common or waste land on the side or sides of any turnpike road, within the distance of thirty feet, if within

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was made was signed by a competent number of trustees, and by the chairman; in consequence of the drain having been contracted in its width towards the bottom, it straitened the passage for the water, and threw it on the adjoining land, which was thereby overflowed and damaged. The owner made no application to any meeting of the trustees for compensation, but brought an action against one of the trustees (the chairman), who had signed the order. It was decided, that the trustees having done what by the act they were required to do, in the best way according to their judgment, and the best advice that was to be procured, were not answerable for the injury which had happened; they were not answerable for a consequential injury, which they not only did not foresee, but which they had no means of foreseeing. *Sutton* v. *Clarke*, 1 *Marsh.* 429. See also *The British Cast Plate Company* v. *Meredith*, 4 *T. R.* 794. But if an act is done arbitrarily and tyranically, they would be answerable. *Leader* v. *Moxton and others*, 3 *Wils.* 461. 2 *Blac. Rep.* 924. *S. C.*

three miles of any market town, or if beyond that distance, within 25 feet from the middle or centre thereof (*a*); or shall make any drain, gutter, sink, or watercourse across, or otherwise break up or injure the surface of any turnpike road, or of any part thereof; or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands, shall turn his or their plough or harrow in or upon any land or ground within the distances aforesaid from the middle or centre of any turnpike road made or to be made, or make any other encroachment on any turnpike road within the distances aforesaid from the middle or centre thereof; every person so offending shall forfeit, for every such offence, 40*s.* to such person as shall make information of the same; and it shall be lawful for the trustees or commissioners who have the care of any such road, to cause such dwelling house or other building, hedge, ditch or fence, drain, sink, watercourse, gutter, or other encroachment to be taken down or filled up, or where any ditch shall be filled up or obstructed, to be opened and cleansed at the expence of the person or persons to whom the same shall belong; and it shall and may be lawful for any one or more justice or justices of the peace of the county where such offence shall be committed, upon proof thereof to him or them made upon oath, to levy, as well the expences of taking down or filling up, or cleansing such dwelling house or other building, hedges, ditches, drains, or other encroachments as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, rendering the overplus (if any) to the owner on demand.

3 G.4. c. 126.

otherwise injuring the roads; or turning the plough on the ground within a certain distance of the road; shall forfeit 40*s.*

(*a*) See § 124, *post*, p. 998.

Encroachments to be removed.

By stat. 4 *G.* 4. *c.* 95. § 72. It is enacted, that if any person or persons whomsoever shall wilfully pull down, break, injure, or damage any table of tolls put up or fixed at any toll gate or bar on any part of any turnpike road, or wilfully or designedly deface or obliterate any of the inscriptions, letters, figures, or marks thereon; or if any person or persons shall wilfully pull up, throw down, break, injure, or damage any posts, rails, or fences placed or to be placed or put up by order of any trustees or commissioners of any turnpike road, or their surveyor or surveyors, either by the side or sides of such road, or at or near to any pit or quarry which shall be used, opened, or made for the getting of stones, gravel, or other materials for the purposes thereof, in order to prevent accidents; or if any person or persons shall wilfully cause any damage or injury to be done to any bridge, arch, wall, or other building or erection to be set up or erected by virtue of any act on any part of any turnpike road, or by the side or sides thereof; or if any person or persons shall cast or throw any earth or rubbish, or other matter or thing, into any drain, ditch, culvert, tunnel, or other watercourse made by virtue of any act, so as to obstruct the water from running or draining off any turnpike road; or if any person or persons shall, without being thereto authorised by the surveyor or surveyors for the time being acting under any act, shovel up, scrape, gather, or carry away any stones, gravel, sand, or other materials, slutch, dirt, mire, drift, or soil from off any footpath or causeway, or any other part of such road; or if any person shall in any manner wilfully prevent any other person or persons from passing him or her, or any carriage under his, her, or their care, upon any such road; or if any

4 G.4. c 95. For preventing annoyances.

4 G.4. c.95. such person shall dig, make, or use any pit or pits for sawing of timber or wood within 30 feet of the centre of any such turnpike road, unless where inclosed by a fence from any such road; every person offending in any of the cases aforesaid shall forfeit and pay a sum not exceeding 40*s*. for every such offence; and one moiety of such penalties shall be paid to the informer, and the other moiety thereof shall be paid to the treasurer of the trustees or commissioners of such turnpike road, and applied towards the repair of such road.

§ XXIV. Branches of Trees and Hedges to be cut, &c.

[3 G. 4. c. 126. § 116, 117.]

3 G.4. c.126. Owners of adjoining lands to cut the hedges and branches of trees obstructing the road. *Vide ante*, Highways *in general*, § VIII. p. 849.

By stat. 3 *G*. 4. *c*. 126. § 116. It is enacted, that the owners or occupiers of the land next adjoining to every turnpike road shall cut, prune, and trim their hedges to the height of six feet from the surface of the ground, and also cut down, prune, or lop the branches of trees, bushes, and shrubs growing in or near such hedges, or other fences adjacent thereto, (such fences, trees, bushes, or shrubs, not being in any garden, orchard, plantation, walk, or avenue to a house, nor any tree, bush, or shrub, being an ornament or shelter to a house, unless the same shall hang over the road, or any part thereof, in such a manner as to impede or annoy any carriage or person travelling thereon,) in such manner, that the turnpike road shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such turnpike road to the damage thereof; and that if such owner or occupier shall not within ten days after notice given by the surveyor for that purpose cut, prune, and trim such hedges, or cut down, prune, or trim such branches of trees, bushes, and shrubs in manner aforesaid, it shall and may be lawful for the said surveyor and he is hereby required to make complaint thereof to some justice of the limit where such turnpike road shall lie, who shall summon the occupier of such lands before him to answer the said complaint; and if it shall appear to such justice that such occupier has not complied with the requisites of this act in that behalf, it shall and may be lawful for such justice, upon hearing the surveyor and occupier of such land or his agent, (or in default of his or her appearance, upon having due proof of the service of such summons,) and considering the circumstances of the case, to order such hedges to be cut, trimmed, and pruned, and such branches of trees, bushes, and shrubs, to be cut down, or pruned, or trimmed, in such manner as may best answer the purposes aforesaid; and if the occupier of such lands shall not obey such order within ten days after it shall have been made, and he or she shall have had due notice thereof, he or she shall forfeit the sum of 2*s*. for every 24 feet in length of such hedge which shall be so neglected to be cut, trimmed, and pruned, and the sum of 2*d*. for every tree, bush, or shrub which shall be so directed to be cut down, pruned, or trimmed; and the surveyor, in case of such default made by the occupier, shall and he is hereby required to cut, prune, and trim such hedges, and to cut down, prune, or trim such branches of trees, bushes, and shrubs, in the manner directed by such order, and such occupier shall be charged with and pay,

If neglected for ten days, surveyor may complain to a justice, who may order the same to be done on pain of forfeiting 2*s*. for every 24 feet in length of the hedge.

Hedges, &c. may be trimmed at the expence of defaulter.

over and above the said penalties, the charges and expences of doing the same, or in default thereof, such charges and expences shall be levied, together with the said forfeitures, upon his or her goods and chattels, by warrant from a justice of the peace, in such manner as is authorised for forfeitures incurred by virtue of this act. **3 G. 4. c. 126.**

§ 117. No person or persons shall be compelled, nor any surveyor permitted, by virtue of this act, to cut or prune any hedge at any other time than between the last day of *September* and the last day of *March*. **Time of cutting hedges and trees.**

§ XXV. Milestones, &c. to be erected.

[3 G. 4. c. 126. § 119.]

By stat. 3 *G*. 4. *c*. 126. § 119. It is enacted, that the said trustees or commissioners shall cause stones or posts to be set up or placed in or near the sides of every turnpike road, at the distance of one mile from each other, denoting the distance of any and every such stone or post from any town or place, and also such direction post at the several roads leading out of any such road, or at any crossings, turnings, or terminations thereof, with such inscriptions thereon denoting to what place or places the said roads respectively lead, of such height or size, and to be erected in such situations as they the said trustees or commissioners shall think proper; and also to cause to be painted in legible characters, on some wall or board at the entrance of every town or village, the name of such town or village, and shall also cause stones to be put up marking the boundaries of parishes where such boundaries shall cross any turnpike road, and from time to time to repair or renew such stones, posts, and boards, and keep and continue legible the inscriptions on such stones, posts, walls, and boards respectively; and if any person or persons shall wilfully break, cut down, pull up, or damage any such posts, stones, or boards, or shall obliterate, deface, spoil, or destroy all or any of the letters, figures, or marks which shall be inscribed or painted thereon, or on any such walls, and be thereof convicted before any justice of the peace for the county, city, or place where such offence shall be committed, by the confession of the party, or by the oath of one credible witness, such person or persons so offending shall forfeit and pay any sum not exceeding 10*l*. for every such offence. [And see stat. 1 *G*. 4. *c*. 56., Vol. V. *tit*. Trespass.]

3 G. 4. c. 126. Milestones and direction posts to be erected.

Names of the towns and villages to be put up at the entrance, and stones to mark the boundaries of parishes.

Penalty for defacing them, not exceeding 10*l*.

§ XXVI. Watering Roads, and what shall be deemed the Centre.

[3 G. 4. c. 126. § 120. 124.]

By stat. 3 *G*. 4. *c*. 126. § 120. After reciting that whereas by several acts of parliament relating to particular turnpike roads, power is given to the trustees to water the roads during certain months in the year, and to take additional tolls on account of the said watering, and the time specified in such acts has been found in many instances too limited to afford to the public all the advantages which might be derived from watering the said roads; it is enacted, that whenever an act or acts has or have been passed to **Extending time for watering roads.**

3 G. 4. c. 126. enable the trustees of any turnpike road or roads to water the same or any part thereof, and to take an additional toll for such watering during a limited time in the said act or acts specified, it shall and may be lawful for the trustees of the said road or roads, at any general meeting held for that purpose, to order that such part of the said road or roads as by the local act or acts relating to the same is allowed or directed to be watered, and a certain additional toll to be taken for such watering, shall be watered, and the said additional toll for watering the same may be demanded and taken for any time between the 1st day of *March* in every year and the 1st day of *November* following; and the said trustees shall have and they are hereby authorised to exercise and enforce all the powers, authorities, remedies, and penalties, for collecting the said additional tolls for watering the roads during the time aforesaid, as they now by law have for any other tolls which may be demanded and collected on the said roads.

What shall be deemed the centre of the road.

§ 124. After reciting that whereas doubts may arise as to what is to be deemed the road, or the centre of the road; enacts, that where, in this or any other act of parliament relating to turnpike roads, any matter or thing is directed or forbidden to be done within a certain distance of the centre of the road, that portion of ground shall be deemed and taken to be the road which has been maintained by the trustees or commissioners as *hard* road, and repaired with stones, gravel, or other materials used in forming roads, for six months immediately preceding any offence committed against such regulations; and the centre of the road shall be the middle of such hard road, where a line being drawn along the road or a point marked, an equal number of feet of hard road which have been so maintained and repaired as aforesaid for six months before shall be found on each side of such line or mark:

No encroachment to be made on the waste lands lying on the side of any road.

Provided always, that nothing herein contained shall authorise any person or persons to inclose or make any encroachment on any waste lands or grounds lying on the side of any turnpike road, being part of the highway, and over which the king's subjects have been used and accustomed to pass; but every person who shall inclose such waste lands and grounds, or obstruct the right of passage over the same, shall continue and be subject to the same process and penalties as if this act had not been made.

§ XXVII. Nuisances — Gates — Windmills — Dogs.

[3 G. 4. c. 126. § 121. 125. 127. — 4 G. 4. c. 95. § 76.]

Gates to open inwards.

By stat. 3 *G.* 4. *c.* 126. § 125. It is enacted, that no door or gate of any building, park, paddock, field, or inclosure whatsoever, shall be made to open into or towards any part of any turnpike road, or of any footpath belonging thereto, or be suffered to continue so to open, except the hanging post thereof shall be fixed or placed so far from the centre of any part of such turnpike road, as that no part of such door or gate shall, when open, project over any part of such turnpike road, or any footpaths belonging thereto;

Gates opening outwards to be removed.

and the occupier or occupiers of any building, park, paddock, field, or inclosure having any door or gate opening outwards, contrary to the meaning of this act, shall, within 14 days after notice to him, her, or them given, either personally or in writing, from the

surveyor of any turnpike road, cause such door or gate to be hung so that no part of the same, when open, shall project over any part of such turnpike road, or any footpath belonging thereto; and in default thereof, the surveyor of the said turnpike road is hereby authorised to cause the door or gate to be hung according to the intention of this act; and the person or persons guilty of such neglect or default shall, upon complaint made to any justice or justices of the peace acting in and for the county or place where such neglect shall appear, and upon conviction upon the oath of one credible witness, pay to such surveyor such sum as the said justice or justices shall direct, to defray the expence of making the alteration and hanging such door or gate, and shall also forfeit a further sum not exceeding 40*s.* for his, her, or their neglect therein, to be fixed by and at the discretion of the justice or justices before whom such conviction shall be made. 3 G.4. c. 126.

Owner to pay the expence of removal, and forfeit not exceeding 40*s.*

§ 121. "If any person or persons shall ride upon any footpath or causeway, by the side of any turnpike road, made or set apart for the use or accommodation of foot passengers, or shall lead or drive any horse, ass, mule, swine, or cattle or carriage of any description, or any wheelbarrow, truck, or sledge, or any single wheel of any waggon, cart, or carriage apart therefrom, upon any such footpath or causeway, or shall cause any injury or damage to be done to the same, or the hedges, posts, rails, or fences thereof, or shall wilfully pull down or damage any bridge, wall, or any other building or erection made by the trustees or commissioners of any turnpike road, or repaired or repairable by them (*a*); or shall haul or draw or cause to be hauled or drawn upon any part of such turnpike road any timber, stone, or other thing, otherwise than upon wheeled carriages, or shall suffer any timber, stone, or other thing, which shall be carried principally or in part upon wheeled carriages, to drag or trail upon such road to the prejudice thereof; or shall use any tipstick, joggle, or other instrument for the purpose of retarding the descent of any cart or other carriage down any hill, in such manner as to destroy, injure, or disturb the surface of any turnpike road; or shall in or upon such road, or by the side or sides thereof, or in any exposed situation near thereto, kill, slaughter, singe, scald, burn, dress, or cut up any beast, swine, calf, lamb, or other cattle; or if any person driving any horse or other beast on the said road, carrying any iron bar or rod, basket or pannier, or any other matter or thing, shall place such bar or rod, basket or pannier, matter or thing, so that the same or any of them shall project more than 30 inches from the side of such horse, or other beast, or so as in any manner to obstruct or impede the passage of any person, or any horse, beast, or carriage travelling along such turnpike road; or if any hawker, higgler, gipsy, or other person or persons travelling with any machine, vehicle, cart, or other carriage, with or without any horse, mule, or ass, shall pitch any tent, booth, stall, or stand, or encamp upon or by the sides of any part of any turnpike road; or if any blacksmith, or other person occupying a blacksmith's shop situate near any turnpike road, and having a window or windows fronting the said road, shall not, by good and close shutters every evening after it becomes twilight, bar and prevent the light from such shop shining into or upon the said road; or if any person or persons shall make or assist in

Penalty on persons committing nuisances, by riding on footpaths, or damaging bridge, &c.;

by drawing timber, &c.;

(*a*) *Vide* 4 G.4. c. 95. § 66. *ante*, p. 957.

by injuring the road;

by slaughtering of cattle;

by obstructing passage of travellers;

by light of blacksmiths' shops;

by making bonfires;

3 G.4. c.126. making any fire or fires commonly called bonfires, or shall set fire to or wantonly let off or throw any squib, rocket, serpent or other firework whatsoever, *within eighty feet* of the centre of such road; or bait or run for the purpose of baiting any bull, or play at foot-ball, tennis, fives, cricket, or any other game or games upon such road, or on the side or sides thereof, or in any exposed situation near thereto, to the annoyance of any passenger or passengers; or if any person shall leave any waggon, wain, cart, or other carriage whatever upon such road, or on the side or sides thereof, without any proper person in the sole custody or care thereof, longer than may be necessary to load or unload the same, except in cases of accident, and in cases of accident for a longer time than may be necessary to remove the same, or shall not place such waggon, wain, or other carriage during the time of loading or unloading the same, or of taking refreshment, as near to one side of the road as conveniently may be, either with or without any horse or beast of draught harnessed or yoked thereto; or shall lay any timber, stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing whatsoever upon such road, or on the side or sides thereof, or the footpaths or causeways adjoining, to the prejudice of such road or footways, or to the prejudice, annoyance, interruption, or personal danger of any person or persons travelling thereon; or shall suffer any water, filth, dirt, or other offensive matter or thing whatsoever, to run or flow into or upon such road or footpaths, from any house, building, erection, lands or premises adjacent thereto; or if any person driving any pigs or swine upon such road shall suffer such pigs or swine to root up or damage such road, or the fences, hedges, banks, or copse on either side thereof respectively; or if any person shall, after having blocked or stopped any cart, waggon, or other carriage in going up a hill or rising ground, cause or suffer to be or remain on such road the stone or other thing with which such cart or other carriage shall have been blocked or stopped; or if any person or persons shall pull down, damage, injure, or destroy any lamp or lamp post put up, erected, or placed in or near the side of any turnpike road or toll house erected thereon, or shall extinguish the light of any such lamp, every person offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding 40*s*. over and above the damages occasioned thereby" (*a*)

by baiting bulls, playing at foot-ball, or other games; by leaving waggons, &c.; by laying timber, &c.; by running of water or filth; by swine; by leaving block stones, &c.; or by damaging lamps.

No windmill to be erected within 200 yards.

§ 127. Enacts, "that no person shall hereafter erect or cause any windmill to be erected within the distance of 200 yards from any part of any turnpike road, under the penalty of 5*l*. for each and every day such windmill shall continue: provided always, that nothing therein contained shall be construed to render legal the re-erection or continuance of any windmill in any case where by the common law such windmill shall be a public or private nuisance."

4 G.4. c.95. Carriers' dogs to be fastened to the carriage.

By stat. 4 *G*. 4. *c*. 95. § 76. It is enacted, that if any person or persons, having the care of any waggon, wain, cart, or other such carriage conveying goods for hire or reward, or for sale, on any turnpike road, shall not chain or fasten any dog that may be attending him or them on such road to such waggon, wain, cart, or carriage, every person so offending shall forfeit and pay any sum not exceeding twenty shillings.

(*a*) *Vide* 4 G.4. c.95. § 72. *ante*, p. 995. See also *R*. v. *White*, 1 *Burr*. 333

§ XXVIII. Cattle straying may be impounded.

[3 G. 4. c. 126. § 123. — 4 G. 4. c. 95. § 75.]

By stat. 4 *G.* 4. *c.* 95. § 75. It is enacted, that if any horse, ass, sheep, swine, or other beast or cattle of any kind, shall at any time be found tethered, or wandering, straying, or lying about any turnpike road, or on any part thereof (except on such parts of any road as lead or pass through or over any common or waste or uninclosed ground), it shall and may be lawful for any surveyor of the road where the same shall be found, or any other person or persons whomsoever, to seize and impound every such horse, ass, sheep, swine, or other beast or cattle, in the common pound (if any) of the parish, township, tithing, or place where the same shall be found, or in such other place as the trustees or commissioners of the road where the same shall be found shall have provided or shall provide for that purpose, and the said horse, ass, sheep, swine, or other beast or cattle there to detain, until the owner or owners thereof shall for every and each horse, ass, sheep, swine, or other beast or cattle so impounded, pay the sum of 2*s*., together with the reasonable charges and expences of impounding and keeping the same, to the treasurer, clerk, or surveyor of the road on which the beast so impounded shall have been found; the said sum of 2*s*. for each beast to be applied to the use of and in aid of the tolls of such road; and in case the said penalty, charges, and expences shall not be paid within five days after such impounding, (notice being thereof first given to the owner, if known, at the time, or if not known, by affixing written notices at the two next toll gates on the road nearest to the place where the same shall be impounded,) it shall and may be lawful for any one or more justice or justices of the peace of the county or place where the offence shall have been committed to order every such horse, ass, sheep, swine, or other beast or cattle to be sold, except where it shall be made to appear to such justice or justices that the horse, ass, sheep, swine, or other beast impounded, escaped from any inclosure by any gate or fence being wilfully or negligently left open or destroyed by any person not being owner or occupier of such inclosure, or employed by such owner or occupier, in which case such justice or justices may remit the said penalty; and the money arising from such sale, after deducting the said penalty and charges and expences of impounding, keeping, and selling every such horse, ass, sheep, swine, or other beast or cattle, shall be paid to the person whose property the same so sold shall appear to have been; and in case the owner thereof shall not be known, and no application shall be made for the money arising from such sale within 21 days after such sale shall have taken place, the said money shall be applied, after deducting the said charges and expences, in the same manner as the said penalty of 2*s*. is hereinbefore directed to be applied: provided always, that no owner of any horses, asses, sheep, swine, or other beasts or cattle impounded as aforesaid, shall in any case pay more than the sum of 5*l*. over and above the charges and expences of impounding and keeping the same, for any number of horses, asses, sheep, swine, or other beasts or cattle impounded at one time: and provided always, that nothing in this clause shall be

4 G. 4. c. 95. Cattle found straying on the roads to be impounded.

Limiting the extent of penalty.

Right of pas-

turage not taken away.

deemed, taken, or construed to extend to take away any right of pasturage which may exist on the sides of any turnpike roads. (a)

3 G.4. c.126. Punishing persons guilty of pound breach.

By stat. 3 G.4 c. 126. § 123. In case any person or persons shall release, or attempt to release, any cow, horse, ass, swine, or other live stock or cattle which shall be seized for the purpose of being impounded under the authority of this act, from the pound or place where the same shall be so impounded, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto, or with which the same shall be fastened, or shall rescue or release, or attempt to rescue or release, any distress or levy which shall be made under the authority of this act, until or before such cow, horse, ass, swine, or other live stock or cattle seized or so impounded, or such distress or levy so made, shall be discharged by due course of law, every person so offending shall, upon conviction thereof before any one of H. M.'s justices of the peace for the county or place where the offence shall have been committed, either upon confession of the party or parties offending, or upon the oath of one credible witness, and which oath the said justice is hereby authorised and empowered to administer, be committed by such justice, by warrant under his hand and seal, to the common gaol or house of correction of such of the said counties wherein the said offence shall have been committed, there to remain without bail or mainprize for any time not exceeding three calendar months.

§ XXIX. Skid-pans to be used.

[3 G. 4. c. 126. § 126.]

3 G.4. c. 126. Directing the using of skid-pans or slippers.

By stat. 3 G. 4. c. 126. § 126. It is enacted, that it shall and may be lawful to and for the trustees or commissioners of every turnpike road, at any meeting to be held for that purpose, on ten days' notice in writing of such meeting being affixed upon the turnpike gates on the road, and they are hereby authorised and empowered, from time to time as they shall think fit, to order and direct that in all cases where any waggon or cart shall descend any hill or hills on the said road, with either of the wheels locked, a skid-pan or slipper shall be used or placed at the bottom of such wheel during the whole time of its being so locked, in such manner as to prevent the said road from being destroyed or injured by the locking of such wheel; and it shall and may be lawful for the said trustees or commissioners from time to time to repeal, alter, or renew such order as they shall think necessary; and whilst any such order so to be made as aforesaid shall be in force, all and every person or persons who shall drive or act as the driver of any waggon or cart down any hill or hills with either of the wheels locked, and without using or having such skid-pan or slipper at the bottom of such wheel, in manner aforesaid, shall, for every

Penalty on driver not using them not exceeding 20s.

(a) An action of trespass may be maintained by the owner of the soil, against a person who turns his cattle out to graze in the road. *Stephens* v. *Whistler*, 11 *East*, 51. If a party justify that his cattle were in the highway, he must show that they were there in the exercise of his legal rights, viz. passing and repassing, for the public are not entitled to use a highway for any other purpose. The cattle might be there as traspassers depasturing the herbage. *Dovastone* v. *Payne*. 2 *H. Blac.* 528. *Vide ante*, tit. Highways, § I.

such offence, forfeit any sum not exceeding 20*s.*: provided always, that a copy of such order shall be affixed on all the turnpikes standing on such road, for 30 days at least before the same shall be in force. 3 G. 4. c. 126.

§ XXX. Destroying Turnpike Gates, and doing other Damage. — Resisting the Execution of this Act.

[3 G. 4. c. 126. § 128. 139.]

Punishment of persons maliciously destroying turnpike gates, &c.

By stat. 3 *G.* 4. *c.* 126. § 128. It is enacted, that if any person or persons whatsoever shall wilfully or maliciously pull down, pluck up, throw down, level, or otherwise destroy or damage any turnpike gate, or any chain, rail, post, or bar, or other fence or fences belonging to any turnpike gate, or any other chain, bar, or fence of any kind whatsoever set up or erected, or hereafter to be set up or erected to prevent passengers passing by without paying any toll directed to be paid by any act or acts of parliament relating thereto, or any house or houses erected or to be erected for the use of any such turnpike gate or turnpike gates, or any weighing engine; or shall forcibly rescue any person or persons being lawfully in custody of any officer or other person for any of the offences before mentioned; then and in any of the said cases every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported to one of H. M.'s plantations abroad for seven years, or in mitigation thereof shall suffer such other punishment as the court may direct, as in cases of petit larceny. (*a*)

Persons resisting the execution of this act, or assaulting collectors, to forfeit not exceeding 10*l.*

§ 139. In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this act, or any particular act made for amending any turnpike road, or shall assault any surveyor or any collector or collectors of the tolls, in the execution of his or their office or offices, or shall pass through any turnpike gate or gates, rail or rails, chain or chains, or other fence or fences set up or to be set up by authority of parliament, without paying the toll appointed to be paid at such gate or other fence, or shall hinder * or make any rescue of cattle or other goods, distrained by virtue of this act, every such person offending therein shall, for every such offence, forfeit any sum not exceeding 10*l.* at the discretion of the justice or justices of the peace before whom he or she shall be convicted.

§ XXXI. Carriages to be marked.

[4 G. 4. c. 95. § 15.]

4 G. 4. c. 95. For discovery of offenders, names of owners to be painted on waggons, &c. in the manner herein mentioned.

By stat. 4 *G.* 4. c. 95. § 15. And for the better discovery of offenders, it is enacted, that the owner or owners of every waggon, wain, or cart, or other such carriage, shall, from and after the 1st day of *October*, 1823, paint or cause to be painted in one or more straight line or lines upon some conspicuous part of the right or off-side of his, her, or their waggon, wain, or cart, or other

(*a*) See tit. Larceny, Vol. III. See also stat. 1 *G.* 4. *c.* 115.

4 G.4. c.95.

(a) The words "common stage cart or waggon" are omitted, but they are required in certain cases by stat. 13 G.3. c 78. §59. *ante*, p. 854, 855.

Penalty 5*l*.

such carriage, or upon the off-side shafts thereof, before the same shall be used on any turnpike road, his, her, or their christian and surname, and the place of his, her, or their abode, or the christian and surname and place of abode of the principal partner or owner thereof, at full length (*a*), in large legible letters, not less than one inch in height, and continue the same thereupon so long as such waggon, wain, cart, or other such carriage shall be used upon any turnpike road; and every owner and proprietor of any waggon, wain, or cart, or other carriage, who shall use or allow the same to be used on any turnpike road, without the names and descriptions painted thereon as aforesaid, or who shall paint or cause to be painted, any false or fictitious name or place of abode on such waggon, wain, or cart, or other carriage, shall forfeit and pay for every such offence a sum not exceeding 5*l*.

§ XXXII. Regulations respecting Drivers of Carriages.

[3 G. 4. c. 126. § 130, 131, 132. — 4 G. 4. c. 95. § 73.]

3 G.4. c.126. One driver may take charge of two carts provided they are drawn only by one horse each.

By stat. 3 *G.* 4. *c.* 126. § 130. It is enacted, that it shall and may be lawful for any person to act as the driver of two carts on any turnpike road, and for such carts to pass and travel on any turnpike road, being only under the care and superintendence of such single person: provided always, that such carts, when under the care of only one person, shall not be drawn by more than one horse each, and the horse of the hinder cart shall be attached by a rein or reins to the back of the cart which shall be foremost; and in case the said horse shall not be so attached, the driver of the said carts shall forfeit the sum of 20*s*., to be recovered as other penalties are by this act to be recovered: provided also, that this enactment shall not extend, or be construed to extend, to carts travelling on any turnpike road within ten miles from the cities of *London* or *Westminster*.

Not to extend to carts within ten miles of London.

Children not to drive carts, &c. on penalty of 10*s*.

§ 131. After reciting, that whereas numbers of carts and waggons, and frequently more than one, are intrusted to the care of children, who are unable to guide the horses drawing the same, enacts, "that no cart or waggon travelling on any turnpike road shall be driven by any person or persons who shall not be of the full age of 13 years, under a penalty not exceeding 10*s*., to be paid by the owner of such cart or waggon."

Drivers of waggons or carts not to ride thereon unless some other person on foot guide the same.

§ 132. After reciting, that whereas many accidents happen, and great mischiefs are frequently done, upon streets and highways, being turnpike roads, by the negligence or wilful misbehaviour of persons driving carriages thereon, enacts, "that if the driver of any waggon or cart of any kind shall ride upon any such carriages in any turnpike road, not having some other person on foot or on horseback to guide the same, (such light carts as are usually driven with reins, and are then conducted by some person holding the reins of the horse or horses, not being more than two drawing the same, excepted,) or if the driver of any carriage whatsoever on any part of any turnpike road shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such road, or shall quit the road and go on the other side the hedge or fence in-

Drivers of any carriage causing hurt or damage to others; or quitting the road;

closing the same, or wilfully be at such distance from such carriage, or in such a situation whilst it shall be passing upon such turnpike road that he cannot have the direction and government of the horses or cattle drawing the same; or if any person shall drive, or act as the driver of any such coach, post-chaise, or other carriage let for hire, or waggon, wain, or cart, not having the owner's name as hereby required painted thereon, or shall refuse to discover the true christian and surname of the owner or principal owners of such respective carriage; or if the driver of any waggon, cart, coach, or other carriage whatsoever, meeting any other carriage, shall not keep his, or her carriage on the left or near side of the road, or if any person shall in any manner wilfully prevent any other person or persons from passing him or her, or any carriage under his or her care upon such road, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any carriage, or of H. M.'s subjects, on any turnpike road, every such driver so offending in any of the cases aforesaid, and being convicted of any such offence, either by his own confession, the view of a justice of the peace, or by the oath of one or more credible witness or witnesses, before any justice of the peace of the limit where such offence shall be committed, or where such offender shall be apprehended, shall, for every such offence, forfeit any sum not exceeding 40*s*., in case such driver shall not be the owner of such carriage; and in case the offender be the *owner* of such carriage, then any sum not exceeding 5*l*.; and in either of the said cases shall, in default of payment, be committed to the house of correction for any time not exceeding one month, unless such forfeiture shall be sooner paid; and every such driver offending in either of the said cases shall and may, by the authority of this act, with or without any warrant, be apprehended by any person or persons who shall see such offence committed, and shall be conveyed before some justice of the peace, to be dealt with according to law; and if any such driver, in any of the cases aforesaid, shall refuse to discover his name, it shall and may be lawful for the justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the house of correction for any time not exceeding three months, or to proceed against him for the penalty aforesaid, by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name."

3 G.4. c.126.

or driving carriage without owner's name;

or not keeping the left or near side; or interrupting free passage;

the driver, if not the owner, to forfeit 40*s*.;

if he be the owner, 5*l*.

Penalty on driver not discovering his name.

By stat. 4 *G*.4. *c*.95. §73. It is enacted, that in case the driver of any waggon, cart, or of any coach or other carriage, shall offend against any of the provisions of any act for making or maintaining any turnpike road, or the said recited act (3 *G*.4. *c*. 126.), or this act, whereby any penalty shall be incurred, and shall refuse to give his name, or shall abscond or absent himself so as not to be found, then it shall and may be lawful for any justice of the peace before whom complaint shall be made, and he is hereby required to issue a summons, requiring the owner of such waggon, cart, or other carriage to appear before him to answer the matter of such complaint; and if such owner shall refuse or neglect to appear, or appearing shall not then, or within ten days thereafter, produce the driver so offending, or disclose his name and place of abode, then the said justice, or any other justice of the peace, on an examin-

4 G.4. c.95.

If driver offend against the provisions of any act, and abscond, the master to pay the penalty.

4 G. 4. c. 95.

ation of the circumstances, and ascertaining, by the examination of witnesses on oath, that such offence has been committed by any such driver of any waggon, cart, or other carriage, shall order and adjudge that the penalty incurred by such driver shall be paid by the owner of such waggon, cart, or other carriage; which penalty shall be recovered and applied in manner directed by stat. 3 *G.* 4. *c.* 126.

§ XXXIII. Apprehension of Offenders.

[3 G. 4. c. 126. § 140.]

3 G. 4. c. 126. For securing transient offenders.

By stat. 3 *G.* 4. *c.* 126. § 140. After reciting that whereas offences may be committed against this act, or other acts for repairing and maintaining turnpike roads, by persons unknown to the collectors or other officers, it is enacted, "that it shall be lawful for any of the trustees or commissioners of any turnpike road, or their clerk or clerks, or their collectors, surveyors, or other officers respectively, and such other person or persons as he or they shall call to his or their assistance, without any warrant or other authority than this act, to seize and detain any unknown person or persons who shall commit any such offence or offences, and take him, her, or them before any justice of the peace for the county, district, or place near to the place where the offence or offences shall be committed, or such offender or offenders shall be seized and apprehended; and such justice and justices shall and is and are hereby required to proceed and act with respect to such offender or offenders according to the provisions of this or any other acts for repairing turnpike roads."

§ XXXIV. Prosecutions — Recovery and Application of Penalties.

[3 G. 4. c. 126. § 133. 137, 138. 141. 143, 144. — 4 G. 4. c. 95. § 69, 83, 84.]

3 G. 4. c. 126. Trustees or commissioners may direct prosecutions for nuisances, &c.

By stat. 3 *G.* 4. *c.* 126. § 133. It is enacted, that the trustees or commissioners of any turnpike road, at a public meeting, may, and they are hereby empowered, if they think fit, to direct prosecutions by indictment, or otherwise, against the offender or offenders for any nuisance or other offence done, committed, or continued in or upon any of the turnpike roads under their care respectively, or to recover any penalty or forfeiture incurred under the provisions of this or any other turnpike act, at the expence of the revenues belonging to such turnpike roads, to be allowed by such trustees or commissioners at some subsequent meeting.

4 G. 4. c. 95. Justices may proceed by summons in the recovery of penalties.

By stat. 4 *G.* 4. *c.* 95. § 83. It is enacted, that in all cases in which by the said recited act any penalty or forfeiture, by that or any other act or acts for making or maintaining any turnpike road imposed, is made recoverable by information before a justice of the peace, it shall and may be lawful for any justice of the peace to whom complaint shall be made of any offence against any such act, or the said recited act or this act, to summon the party complained against before him, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the

penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual, to all intents and purposes, as if an information in writing was exhibited. 4 G. 4. c. 95.

By stat. 3 *G.* 4. *c.* 126. § 137. It is enacted, that no conviction shall be had or made by virtue of this act, unless upon the view of a justice convicting, or on confession of the party accused, or upon the oath of one or more credible witness or witnesses, and any inhabitant of any parish, township, or place in which any offence shall be committed contrary to this act, shall not be deemed an incompetent witness by reason of his or her being an inhabitant of such parish, township, or place; and any justice of the peace may act in the execution of this act, notwithstanding he may be a creditor, or a trustee or commissioner for making, repairing, and maintaining the roads on which any offence contrary to this act shall be committed. 3 G. 4. c. 126. Inhabitants good witnesses.

By stat. 4 *G.* 4. *c.* 95. § 84. It is enacted, that no person shall be deemed incompetent to give evidence, or be disqualified from giving testimony or evidence in any action, suit, prosecution, or other legal proceedings to be brought or had in any court of law or equity, or before any justice or justices of the peace under or by virtue of any act for making or maintaining any turnpike road, or the said recited act or this act, by reason of being a trustee or commissioner of such road, or a mortgagee or creditor of the tolls thereof, or a farmer, lessee, or collector of such tolls, or a treasurer, or clerk, or surveyor, or other officer under such act; nor shall such testimony or evidence, for any of the reasons aforesaid, be rejected or liable to be questioned or set aside. 4 G. 4. c. 95. Trustees, &c. may be witnesses.

By stat. 3 *G.* 4. *c.* 126. § 138. It is enacted, that if any person or persons after having been paid or tendered a reasonable sum of money for his, her, or their costs, charges, or expences, shall be summoned as a witness or witnesses to give evidence before any justices * of the peace, touching any matter of fact contained in any information or complaint for any offence against any act of parliament relating to turnpike roads or this act, either on the part of the prosecutor or the person or persons accused,* shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his, her, or their refusal or neglect, or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges, and expences,) refuse to be examined upon oath, and give evidence before such justice of the peace, then and in either of such cases such person shall forfeit for every such offence any sum not exceeding 40*s.* 3 G. 4. c. 126. Penalty on witnesses not attending when summoned, not exceeding 40*s.* * *Sic.* * *Sic.*

§ 141. All penalties, forfeitures, and fines by this act inflicted or authorised to be imposed (the manner of levying and recovering and applying whereof is not herein otherwise directed), shall upon proof and conviction of the offences respectively, before any justice of the peace for the county, riding, or place where the offence shall have been committed (as the case may require), either by the confession of the party offending, or by the oath of any credible witness or witnesses (which oath such justice is in every such case hereby fully authorised to administer), be levied, together with the costs attending the information and conviction, by Recovery and application of penalties. See forms (Nos. 17, 18, 19, 20, 21, 22.) *post.*

3 G.4. c.126.

distress and sale of the goods and chattels of the party or parties offending, by warrant under the hand and seal of such justice (which warrant such justice is hereby empowered and required to grant), and the overplus (if any) after such penalties, forfeitures, and fines, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justice to order (a) the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security, to the satisfaction of such justice, for his or their appearance before such justice, on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said justice is hereby empowered to take, by way of recognizance or otherwise (b); but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such justice of the peace, and he is hereby authorised and required, by warrant or warrants under his hand and seal, to cause such offender or offenders to be committed to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to remain, without bail or mainprize, for any time not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the monies arising by such penalties, forfeitures, and fines respectively, when paid or levied, if not otherwise directed to be applied by this act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same, and the other moiety to the treasurer or treasurers to the trustees or commissioners for repairing and maintaining the road on which such offence shall have been committed, and applied and disposed of for the purposes of such road and of this act.

(a) This order may be by parol. *Still* v. *Watts*, 7 *East*, 533.

(b) See stat. 5 G.4. c.18. Vol. I. tit. Distress.

4 G.4. c.95.

By stat. 4 *G.* 4. *c.* 95. § 69. It is enacted, that where by stat. 3 *G.* 4. *c.* 126., or any act for making or maintaining any turnpike road, any damages or charges are directed or authorised to be paid or recovered in addition to any penalty or penalties, for any offence or offences, the amount of such damages or charges in case of dispute respecting the same shall be settled, ascertained, and determined by the justice or justices of the peace by or before whom any offender shall be convicted of any such offence or offences, who is hereby authorised and required, on nonpayment thereof, to levy such damages or charges by distress and sale of the offender's goods and chattels, in manner directed by stat. 3 *G.* 4. *c.* 126. for the levying of any penalties or forfeitures.

3 G.4. c.126. Prosecutors may recover by information, or by action, &c.

By stat. 3 *G.* 4. *c.* 126. § 143. Every prosecutor or informer shall sue for and recover any forfeiture or penalty imposed by this or any other act or acts of parliament made for erecting turnpikes, or for repairing and amending turnpike roads, in the manner hereinafter mentioned; (that is to say,) if the same shall exceed the sum of 20*l.* or upwards, it shall be recoverable by action of debt in any of H. M.'s courts of record, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of

——— being forfeited by an act passed in the third year of the reign of H. M. king *George* the fourth, intituled *An act* [*here set forth the title of this act, if the offence shall be committed under it*, or, *An act, &c. setting out the title of the act under which the penalty shall be claimed*]; and the plaintiff, if he recover in any such action, shall have full costs, provided that there shall not be more than one recovery for the same offence, and that 21 days' notice be given to the party offending, previous to the commencement of such action, and that the same be brought and commenced within three calendar months after the offence for which such action is brought shall have been committed; and if such penalty or forfeiture shall not exceed the sum of 20*l*., and shall be more than 5*l*., the same shall be recoverable only by information before a justice of the peace, subject to appeal in manner hereinafter mentioned; and if such penalty or forfeiture shall not exceed the sum of 5*l*., the same shall in like manner be recoverable only by information before a justice of the peace, and no writ of *certiorari* to remove the same shall be allowed. See 4 *G.* 4. *c.* 95. § 83., *ante*, 1006. **3 G.4. c.126. Ante, p. 921.**

§ 144. Where any distress shall be made for any sum or sums of money to be levied by virtue of this act, or any other act for repairing, amending, or maintaining any turnpike road, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers on account of any default or want of form in any proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers, *ab initio*, on account of any irregularity which shall be afterwards done in making the distress; but the person or persons aggrieved by such irregularity may recover the satisfaction for the special damage in an action on the case: provided always, that no plaintiff shall recover in any action for such irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made by or on behalf of the party who shall have committed or caused to be committed any such irregularity or wrongful proceedings, before such action brought; and in case no such tender shall have been made, it shall and may be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit; whereupon such proceedings, or orders and judgment, shall be had, made, and given in and by such court as in other actions where the defendant is allowed to pay money into court. See *Wallace* v. *King*, 1 *H. Blac.* 13. **Party aggrieved may recover satisfaction for special damages. Tender of amends.**

§ XXXV. Appeal.

[4 G. 4. c. 95. § 87.]

By stat. 4 *G.* 4. *c.* 95. § 87. It is enacted, that if any person shall think himself or herself aggrieved by any order, judgment, or determination made, or by any matter or thing done by any justice or justices of the peace, or by any trustees or commissioners of any turnpike road in pursuance of this act, or the said recited act, (3 *G.* 4. *c.* 126.) or any local act for making, repairing, or maintaining any turnpike road, (except where the order, judgment, or determination of any such justice or justices, trustees or commissioners, are hereby declared to be final and conclusive, and **4 G.4. c.95. Persons aggrieved may appeal to quarter sessions.**

4 G.4. c.95. except under the particular circumstances hereinafter mentioned,) and for which no particular method of relief hath been already appointed, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, division, riding, or place wherein the 'cause of such complaint shall arise, such appellant first giving or causing to be given to such justice, commissioner, or trustee, by whose act or acts such person shall think himself or herself aggrieved, notice (No. 23.) in writing (No. 23.) of his or her intention to bring such appeal, and of the matter thereof, within six days after the causes of such complaint shall arise, and within four days after such notice entering into recognizances before some justice of the peace, with two sufficient sureties, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such general or quarter sessions, and also to pay the penalty or forfeiture in case the conviction should be affirmed; and each and every justice of the peace, commissioner, or trustee, having received notice of such appeal as aforesaid, shall return all proceedings whatever had before him respectively, touching the matter of such appeal, to the said justices at their general or quarter sessions aforesaid; and the said justices at such sessions, upon due proof of such notice having been given as aforesaid, and of such recognizance having been entered into in manner before directed, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper, to be levied and recovered by distress and sale of the goods and chattels of the person or persons against whom such determination shall be given, and the determination of such general or quarter sessions shall be final and conclusive to all intents and purposes; and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process whatsoever, into any of H. M.'s courts of record at *Westminster*; any law or statute to the contrary notwithstanding: provided, that in case there shall not be time to give such notice, and enter into such recognizances as aforesaid, before the next sessions to be holden after the conviction of the appellant, then and in every such case such appeal may be made to the next following sessions, and shall be there heard and determined: provided always, that no appeal shall be allowed against any conviction for any penalty or forfeiture which shall not exceed the sum of 40*s*.

Proceedings not to be removed by *certiorari*.

§ XXXVI. Power to administer Oaths.

[3 G. 4. c. 126. § 146.]

3 G.4. c.126. Power to administer oaths.

By stat. 3 *G.* 4. *c.* 126. § 146. It is enacted, that where any oath or affirmation is by this or any act relating to any turnpike road required and directed to be made or taken, the justices of the peace of any county or place, or the trustees or commissioners of any turnpike road, (as the case may be,) and according to the several jurisdictions herein given to them respectively as aforesaid, shall and they are hereby respectively empowered to administer the same.

§ XXXVII. Limitation of Actions.

[3 G. 4. c. 126. § 147.]

By stat. 3 *G.* 4. *c.* 126. § 147. It is enacted, that if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, then and in every such case such action or suit shall be commenced or prosecuted within three months after the fact committed, and not afterwards; and the same and every such action or suit shall be brought in the county or place where the cause of action shall have arisen, and not elsewhere (*a*); and the defendant in every such action or suit shall and may plead the general issue, and at the trial thereof give this act and the special matter in evidence; and if the matter or thing complained of shall appear to have been done under the authority and in the execution of this act, or if any such action or suit shall be brought after the time limited for bringing the same, or be brought and laid in any other county or place than as afore-mentioned, then the jury shall find for the defendant; and if the plaintiff shall become nonsuit, or discontinue his or her action after the defendant shall have appeared, or have a verdict against him or her, or if upon demurrer, judgment shall be given against the plaintiff, the defendant shall and may recover treble costs, and have the like remedy for recovery thereof as any defendant hath in any cases by law. (*b*)

3 G.4. c.126. Limitation of actions.

General issue.

Treble costs.

§ XXXVIII. Exceptions from Operation of this Act.

[3 *G.* 4. c. 126. § 149, 150. — 4 *G.* 4. c. 95. § 90, 91, 92, 93.]

By stat. 3 *G.* 4. *c.* 126. § 149. It is enacted, that nothing in this act contained shall extend to the turnpike road called the *Commercial Road*, or the several branches leading from and out of the same, authorised to be made, repaired, and maintained under and by virtue of five several acts passed in the 43, 44, 46, 49, and 51 *G.* 3., for making and maintaining the roads communicating with the *West* and *East India* docks, and for repairing the *Cannon Street* road, and for making and maintaining a new road to *Barking*, and a road from the *Romford* and *Whitechapel* road to *Tilbury Fort*, in the counties of *Middlesex* and *Essex*, and also for making a new branch of road from *King David Lane*, *Shadwell*, to the *Essex* road at *Mile End*, in the county of *Middlesex*, or to affect, encroach upon, vary, alter, or interfere with any of the tolls, weights, or duties created by virtue of the said acts or any of them, or any of the powers and authorities given to or vested in the trustees acting under or by virtue of the said acts, or any or either of them.

Act not to extend to the Commercial Road, and branches of road leading from and out of the same, authorised to be made and repaired by the acts of 43, 44, 46, 49, and 51 G.3.

(*a*) This privilege is confined to actions brought for an act done under the authority of this act; and, therefore, if an action is brought against a toll collector, for an assault alleged to have been committed in enforcing the acts imposing the duties on post horses, the plaintiff is not limited by this section to the county where the cause of action arises. *Bazing* v. *Shelton*. 5 *T. R.* 16.

(*b*) As to the liability of trustees and their officers for acts done by them on their orders. See *Sutton* v. *Clarke*, 1 *Marsh*, 429. — *Harris* v. *Baker*, 4 *M.* & *S.* 27. — *Everett* v. *Cooch*, 7. *Taunt.* 1. — *Boyfield* v. *Porter*, 13 *East*, 200.

3 G.4. c.126. Nor to 56 G.3. c.lxxxiii. for improving the road from Glasgow to Carlisle, or &c.

§ 150. Nothing herein contained shall be construed to extend to an act passed in the 56 *G.* 3., intituled *An act for improving the road from the city of* Glasgow *to the city of* Carlisle, or to three several acts amending the same, passed in the 58 & 59 *G.* 3. and 1 & 2 *G.* 4.

4 G.4. c.95. Act not to extend to certain roads.

By stat. 4 *G.* 4. *c.* 95. § 90. Nothing in stat. 3 *G.* 4. *c.* 126., or this act, shall extend to any road not under the care and management of trustees or commissioners, or to any road which shall be made, maintained, or supported under the provisions of any act or acts, passed for an unlimited period, notwithstanding tolls may be collected on such roads, or shall extend to affect, alter, or interfere with the qualifications of any commissioners or other persons having the care and management of any such last-mentioned roads, or with any tolls taken, or weights carried thereon, or in any other manner therewith.

3 G.4. c.126. or 4 G.4. c.95. not to extend to 59 G.3. c.30., or 59 G.3. c.48., or roads repaired under them.

§ 91. Nothing in stat. 3 *G.* 4. *c.* 126., or in this act, shall extend to stat. 59 *G.* 3. *c.* 30., *for vesting in commissioners the line of road from* Shrewsbury *to* Bangor Ferry; nor to stat. 59 *G.* 3. *c.* 48., *for repairing roads between* London *and* Holyhead, *by* Chester, *and between* London *and* Bangor, *by* Shrewsbury, *and for giving additional powers to the commissioners therein named, to build a bridge over the* Menai Straits, *and to make a new road from* Bangor Ferry *to* Holyhead, *in the county of* Anglesea; nor to any road or roads repaired, maintained, and supported under the powers of the said acts.

4 G.4. c.95. not to extend to the Commercial Road, or &c.

§ 92. Nothing in this act contained shall extend to the turnpike road called the *Commercial Road*, or the several branches leading from and out of the same, authorised by virtue of five several acts passed in the 43, 44, 46, 49 & 51 *G.* 3., for making and maintaining the roads communicating with the *West* and *East India* docks, and for repairing the *Cannon Street Road*, and for making and maintaining a new road to *Barking*, and a road from the *Romford* and *Whitechapel Road* to *Tilbury Fort*, in the counties of *Middlesex* and *Essex*, and also for making a new branch of road from *King David Lane, Shadwell*, to the *Essex Road* at *Mile End*, in the county of *Middlesex*, or to affect, encroach upon, vary, alter, or interfere with any of the tolls, weights, or duties created by the said acts.

§ 93. Provided always, that so much of the turnpike road from *Carlisle* to *Glasgow* as lies in the county of *Cumberland* shall, from and after the passing of this act, be subject to the regulations, powers, and provisions of the said act, 3 *G.* 4. *c.* 126., and this act, so far as the same respects nuisances, annoyances, and trespasses; and the justices of the peace acting for the county of *Cumberland* are hereby authorised and empowered to enforce all penalties for nuisances, annoyances, and trespasses on the said road.

§ XXXIX. Consent to Turnpike Bill may be signified by Affidavit.

[3 *G.* 4. c. 126. § 151, 152, 153.]

3 G.4. c.126. Parties interested may sig-

By stat. 3 *G.* 4. *c.* 126. § 151. It is enacted, that all persons concerned or interested in any bill for making or repairing any turnpike road, or for widening or diverting such road, may signify

their consent to the same by affidavit, taken and authenticated according to the form herein after prescribed, unless the committee of either house of parliament to whom such bill, or the petition of such bill, shall be referred, shall otherwise order.

3 G.4. c.126.

nify their consent to any turnpike bill by affidavit.

§ 152. Enacts, that it shall and may be lawful for any one or more justice or justices of the peace, or master or masters extraordinary in chancery, to take affidavits on oath or affirmation (which oath or affirmation such justice or justices or master or masters extraordinary in chancery is and are hereby authorised and empowered to administer) of the answers that may be given by the owners and occupiers of lands, on applications made to them for their consent to such bills; and every affidavit shall be in the form following, as near as the circumstances of the case will admit:—

Justices of the peace or masters extraordinary in chancery empowered to take all such affidavits.

A. B. *of* ———, *maketh oath, and saith, that he did apply to* C. D., *who he believes to be the owner of* [set out the property] *being part of the lands through which the intended turnpike road from* E. *to* F. *is to be carried, or the alteration to be made* [as the case may be], *and that he received from such owners the answers set forth in the paper hereunto annexed.*

(Signed) A. B.

Sworn [or, *solemnly affirmed*] *before me* [as in the other forms hereinbefore set forth].

As witness my hand and seal.

And no such affidavit as aforesaid shall be subject or liable to any stamp duty now payable by any act or acts of parliament, or which shall hereafter be imposed, unless specially named and made subject thereto by the act or acts of parliament imposing the same.

Affidavit not liable to stamp duty.

§ 153. Enacts, that proof of the hand-writing of any justice of the peace, or master extraordinary in chancery, before whom any such affidavit shall be made as aforesaid, shall be sufficient evidence of the signature of such justice or master extraordinary before any committee of either house of parliament, without any witness being produced who was present at the time when such affidavit was made, and without a witness being produced to prove that such justice of the peace, or master extraordinary in chancery, before whom such affidavit was made, was at the time of making such affidavit a justice of peace or master extraordinary in chancery.

Proof of hand-writing of justice to be deemed sufficient.

§ XL. Forms of Proceedings.

[3 G. 4. c. 126. § 148.]

By stat. 3 *G.* 4. *c.* 126. § 148. It is enacted, "that the forms of proceeding relative to the several matters contained in this act, which are set forth and expressed in the schedule hereunto annexed, may be used upon all occasions, with such additions and variations only as may be necessary to adapt them to the particular exigencies of the case, and that no objection shall be made or advantage taken for want of form in any such proceedings by any person or persons whomsoever."

3 G.4. c.126.

Forms in the schedule annexed to be used.

The Schedule to which Stat. 3 G. 4. c. 126. refers; containing the Forms of Proceedings mentioned in the foregoing Act.

No. 1.

No. 1.—Order of Trustees for erecting a Weighing Engine.

AT a meeting of the trustees of the turnpike roads under an act passed in the ——— *year of the reign of his majesty king* George *the* ———, *for* [state the title of the act], *held at* ———, *the* ——— *day of* ———.

In pursuance of the powers given to us by an act passed in the third year of the reign of his majesty king George *the fourth, for regulating turnpike roads, we do hereby order that an engine proper for the weighing of carriages of the constructions and weights specified in the said act be forthwith erected at or as near as conveniently may be to the toll gate or bar now erected upon the said turnpike road at* ———; *and that* A. B., *the* [treasurer, clerk, or] *surveyor of the said turnpike road, do contract with some proper person* [or, *with* C. D.] [in case the trustees shall think fit to name the person] *for the making and erecting such engine, and do inspect and take care that the same is properly done; and we do order the gatekeeper at the said gate or bar for the time being to attend the said weighing engine, and carefully to weigh all carriages passing loaded upon the said road, at the place where such engine shall be erected, together with the loading thereof, and to take the several additional tolls or rates for overweight, and give tickets of the weight of such carriages and loading, when required by the driver thereof, and also to enter in a separate book, to be kept by him for that purpose, an account of every carriage so weighed, which shall with the loading exceed the weights allowed by the said act, and account to us for the money received for all such overweight.*

No. 2.
4 G. 4. c. 95.

No. 2.—Table of Weights allowed in Winter and Summer to Carriages directed to be weighed (including the Carriage and Loading), by Stat. 4 G. 4. c. 95. Sched. No. 1., referred to in § 89. *ante*, p. 965. 970.

	SUMMER.		WINTER.	
	Tons.	Cwts.	Tons.	Cwts.
For every waggon with nine-inch wheels	6	10	6	0
For every cart with nine-inch wheels -	3	10	3	0
For every waggon with six-inch wheels	4	15	4	5
For every cart with six-inch wheels -	3	0	2	15
For every waggon with wheels of the breadth of four inches and a half -	4	5	3	15
For every cart with wheels of the breadth of four inches and a half - -	2	12	2	7
For every waggon with wheels of less than 4½ inches - - - - -	3	15	3	5
For every cart with wheels of less than 4½ inches - - - - - -	1	15	1	10

No. 3. — Agreement between Trustees of different Turnpike Roads for erecting One Weighing Engine for the Use of such Roads. *Vide ante*, p. 971. 3 G.4. c.126. No. 3.

AT a meeting of the trustees of the turnpike roads, under an act passed in the ——— *year of the reign of king* George *the* ———, "*for* [state the principal part of the title of the act], *and also of the trustees of the turnpike roads, under an act passed in the* ——— *year of the reign of king* George *the* ———, "*for* [&c. as above], *held at* ———, *the* ——— *day of* ———, *for the purpose of agreeing upon and ordering a weighing engine at the joint expence of the trustees, for the use of the said several turnpike roads, pursuant to the powers given by an act passed in the third year of the reign of his majesty king* George *the fourth*, " for regulating turnpike roads."

It appearing to us, that a weighing engine may be erected at ——— [describing the spot where it can be most conveniently placed], *which will accommodate both the said turnpike roads, according to the true intent and meaning of the said act: We do therefore order, &c.* [as in the form above mentioned], *and we do hereby agree and order, that the expences of making and erecting the said weighing engine, and the sum of* ———, *which we do hereby agree and order shall be paid to the toll-gatherer attending the said toll gate for the time being, weekly for his extraordinary trouble in attending the said weighing engine, shall be advanced and paid by the treasurers of the said several turnpike roads, in the shares and proportions following;* videlicet, *that the treasurer of the* ——— *road shall pay* [*one half*], [*two-third*], [*three-fourth*] *parts thereof*, [as the trustees shall agree], *and the treasurer of the* ——— *road shall pay the remaining* [*one-half*], [*one-third*], or [*one-fourth*] *part thereof; and that the money to be received at the said weighing engine by forfeitures for overweight shall be paid to the said respective treasurers in the like proportions, and applied by them for the use of the said respective turnpike roads.*

(*Signed*)

No. 4. — Notice of a Meeting of Trustees for ordering a Side Gate to be erected. *Vide ante*, p. 981. No. 4.

NOTICE is hereby given, that the trustees of the turnpike roads, under an act passed in the ——— *year of the reign of king* George *the* ———, "*for* [state the material parts of the title of the act], *will meet at the house of* ———, *at* ———, *on the* ——— *day of* ——— *next, at the hour of* ———, *in the* ——— *noon, in order to consult about erecting a toll gate on the side of the said turnpike road, at or near a place called* ———, *across a certain highway there, leading to* ———. *Dated the* ——— *day of* ———.

A. B. *Clerk to the said trustees.*

3 G.4. c.126. No. 5.

No. 5. — Order of the Trustees for erecting a Side Gate. *Vide ante*, p. 981.

AT a meeting of the trustees of the turnpike roads, under an act passed in the —— *year of the reign of king* George *the* ——, "*for* [here state the material parts of the title of the act], *being assembled this* —— *day of* ——, *to enforce the directions of an act passed in the third year of the reign of king* George *the fourth,* " for regulating turnpike roads" [as far as the same respects the erecting of side gates.]

In pursuance of public notice given in writing upon all the toll gates erected on the said road, and also in the —— *newspapers circulated in this part of the country, for fourteen days now last past, we do order, that a toll gate shall be erected on the side of the said turnpike road, at or near a place called* ——, *across a certain highway there, leading to* ——, *and that the following toll be taken at the said gate, videlicet* [here insert the particular tolls to be taken at the said side gate].

No. 6.

No. 6. — Notice for letting Tolls. *Vide ante*, p. 982.

NOTICE is hereby given, that the tolls arising at the toll gate [or, *toll gates,* if more than one,] *upon the turnpike road at* ——, *called or known by the name of the* —— *gate, will be let by auction to the best bidder, at the house of* ——, *at* ——, *on the* —— *day of* —— *next, between the hours of* —— *and* ——, *in the manner directed by the act passed in the third year of the reign of his majesty king* George *the fourth,* " for regulating turnpike roads," *which tolls produced the last year the sum of* —— *above the expences of collecting them, and will be put up at that sum; whoever happens to be the best bidder, must at the same time pay one month in advance* (if required) *of the rent at which such tolls may be let, and give security, with sufficient sureties, to the satisfaction of the trustees of the said turnpike road, for payment of the rest of the money monthly* [or in such other proportions as shall be directed].

A. B. *Clerk to the trustees of the said turnpike road.*

No. 7.

No. 7. — Order of Trustees for reducing the Tolls. *Vide ante*, p. 982.

AT a meeting of the trustees of the turnpike roads, under an act passed in the —— *year of the reign of king* George *the* ——, "*for, &c.* [state the principal part of the title of the act,] *held at* ——, *the* —— *day of* ——.

We, whose names are subscribed, being —— *or more of the trustees acting under the said act, being now assembled for reducing the tolls authorised to be taken by and under the said act, pursuant to public notice given for that purpose in the* —— *newspapers circulated in this part of the country, and also affixed*

upon all the turnpike gates erected upon the said urnpike road, for upwards of one calendar month now last past, and having the consent of the several persons entitled to five-sixth parts of the money now remaining due upon the credit of the said tolls, this day signified and proved to us, do hereby order, that the tolls granted by the said act shall, from and after the ——— day of ——— be lessened and reduced in the following manner [here state the several reductions proposed to be made]. 3 G.4. c.126.

No. 8.—Agreement between the Trustees of a Turnpike Road and a Person liable by Tenure to repair some part of it. *Vide ante*, p. 989. No. 8.

AT a meeting of the trustees of the turnpike roads, under an act passed in the ——— year of the reign of king George *the* ———, "*for* [state the principal part of the title of the act], *held at* ———, *the* ——— *day of* ———.

Whereas A. B. *of* ——— *is liable by tenure, &c.* [as the case shall be,] *to the repair of a certain highway leading between* ——— *and* ———, *of the length of* ——— *yards or thereabouts; and the said highway being now made turnpike road by virtue of the said act, will occasion a greater expence to make and keep the same in proper repair than would have been necessary if no such act had been obtained, and the said* A. B. *attending this meeting in person* [or, *by* C. D. *his attorney or agent authorised to treat in his behalf*], *the said trustees and the said* A. B. *&c. in pursuance of a power given by an act passed in the third year of the reign of king* George *the fourth,* "for regulating turnpike roads," *have, in order to put and keep the said road in proper condition and repair, come to the following agreement;* videlicet, *that the said trustees shall on or before the* ——— *day of* ——— *next, pay and allow the sum of* ——— *out of the tolls arising upon the said turnpike roads towards putting the said road into proper repair, to be laid out and expended by the surveyor of the said turnpike road, and that the said* A. B. *shall advance and pay into the hands of the treasurer of the said turnpike road on or before the* ——— *day of* ——— *next, the sum of* ———, *to be also laid out and expended by the said surveyor in the repair of the said road, and that from and after the* ——— *next the said turnpike road shall be kept in repair by the said trustees out of the said tolls as aforesaid, so long as the said turnpike act shall continue, upon the said* A. B. *paying into the hands of their treasurer the sum of* ———, *upon the* ———, *in every year, which the said* A. B. *doth hereby for himself and his heirs agree to pay accordingly, so long as the said road shall be so repaired by the said trustees as aforesaid.*

[Or, if it shall be agreed that *A. B.* shall keep the road in repair upon having an annual allowance in money or statute duty from the said trustees, let the agreement be varied and adapted to the case.]

3 G.4. c.126. No. 9.

No. 9. — Magistrates' Summons. *Vide ante*, p. 986.

To the surveyors of the highways of the parish of ———, in the county of ———.

UPON application made by ———, surveyor of the turnpike roads from ———, appointed by the trustees for putting into execution an act of parliament passed in the ——— year of the reign of his majesty king George *the ———, intituled* An act ———, *by order of the trustee for the said road to us, two of his majesty's justices of the peace acting in and for the said county; we do hereby summon you, the surveyors of the highways of the parish or place of ———, in the said county, to deliver a list to the said ———, as such surveyor as aforesaid, at his house, situate in the said county, within ——— days after the service of this summons, of the names of the several persons, inhabitants of the said parish or place, and who are by law subject and liable to do statute work for the present year upon the road situate in the said parish or place, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts or otherwise, and also the amount of the respective sums to be paid; and we the said justices do hereby require you to make such lists of names, in such manner and under such regulations and restrictions as is or are directed by any law or statute now in force and effect for the repair of the public highways.*

And in case you shall refuse or wilfully neglect to give in such list as aforesaid, or shall knowingly or wilfully give in a false or imperfect list, you so offending will for every such offence forfeit and be liable to pay a sum not exceeding 10*l.* *Given under our hands and seals, this ——— day of ———.*

No. 10.

No. 10. Notice to be given to Surveyors of Highways. *Vide ante*, p. 987.

To the surveyors of the highways of the parish or place of ———, in the county of ———.

I DO hereby give you notice, that the list delivered by you to me as surveyor of the turnpike road from ——— to ———, in the said county of ———, of the names of the several persons who within your said parish or place are by law liable to do statute work for the present year, or to the payment of money in lieu of or as a composition for such statute work, will be laid before two of his majesty's justices of the peace for the said county, in pursuance of the directions of the act passed in the ——— year of his majesty king George *the ———, intituled* An act ———, *on the ——— day of ———, at ———, in the said county, in order that such two justices may adjudge and determine what part or proportion of the statute work for the said year shall be done upon the said road, and also what proportion of the composition money shall be paid to the trustees of the said road, or to their treasurer. And I do hereby give you*

further notice, that I shall apply to the justices for [one-half, one-third, as the case may be,] *of the statute duty from your parish for this year, which according to the list delivered by you will be* (say) ——— *days in the whole* ———, *in composition money. If you object to this division, you will in course appear, but if not, the same will be confirmed by the justices, if they think proper. Dated this* ——— *day of* ———. 3 G.4. c.126.

——— *Surveyor of the said turnpike road.*

No. 11. — Justices' Order, apportioning Statute Labour. *Vide ante*, p. 987. No. 11.

———, to wit. } *WE, two of his majesty's justices of the peace, acting in and for the county of* ———, *upon application by* ———, *the surveyor appointed by the trustees of the turnpike road from* ——— *to* ———, *in the said county, in pursuance of an act of parliament, passed in the* ——— *year of the reign of his majesty king* George *the* ———, *intituled* An act for ———, *do adjudge and determine that the inhabitants of the parish of* ———, *in the said county of* ———, *shall do* ——— *part or proportion of the statute work for the ensuing year upon such turnpike road in the said parish of* ———, *being a parish in which the said road lies, and that* ——— *proportion of the money received by the surveyor or surveyors of the highways of such parish or place, in lieu of or as a composition for such statute work, shall be by him or them paid to the said trustees of the said turnpike road, or to their treasurer, or other person authorised by them to receive the same, on or before the* ——— *day of* ———; *the names of the several persons appointed to do such proportion of the statute work on the said turnpike road appear in the schedule to this order. Given under our hands, the* ——— *day of* ———.

(Signed) ———.

No. 12. — Order of Justices at a Special Sessions to take part of the Statute Duty from Turnpike Roads, for the Benefit of other Highways in the said Parish, &c. *Vide ante*, p. 987. No. 12.

County of ——— to wit. } AT a special sessions held by the justices of the peace for the said county, acting in the [hundred] of ———, within the said county, at ———, on the ——— day of ———.

Whereas application and complaint upon oath has been made unto us by A. B., *surveyor of the* [*parish, &c.*] *of* ———, *that the several highways, not being turnpike, within the said* [*parish, &c.*] *are very extensive and in bad repair, and that a considerable part of the statute duty arising within the said* [*parish, &c.*] *hath been called forth and required to be applied in the repair of certain turnpike roads lying within the said* [*parish, &c.*] *which are in good condition, and have a considerable revenue for their support, arising from the tolls collected thereupon; and we having duly summoned* C. D., *the*

3 G.4. c.126. *surveyor of the said turnpike road, to appear before us, to show cause why the said statute duty called forth and applied by him to the repair of the said turnpike road, should not be withdrawn therefrom and applied to the repair of the other highways within the said [parish, &c.] and upon hearing the said* C. D., *and receiving an account of the revenues and debts of the said turnpike road and of the state and condition of the repair of the said turnpike road and highway respectively; and it appearing to us, upon full consideration had thereupon, that part of the statute duty hitherto employed by the said [parish, &c.] for the repair of the said turnpike road may be conveniently dispensed, without endangering the securities for the money advanced upon the credit of the tolls thereof, and that such statute duty is wanted for the repairs of the other highways within the said parish; we, in pursuance of the power given to us by the act passed in the third year of the reign of king* George *the fourth,* "for regulating turnpike roads," *do order that from and after the ——— day of ——— next, there shall be only [one] day's statute duty performed by the inhabitants of the said [parish, &c.] upon the said turnpike road within the same, and that the remainder of the statute duty shall be performed upon the other highways within the said [parish, &c.].*

[If there are more turnpike roads than one, or the whole statute duty shall be thought fit to be taken away, this form must be varied to fit those cases; the summons to the surveyors will be very easily formed from this order.]

No. 13.

No. 13.—Certificate of the above Order to the Justices of the Peace at their Quarter Sessions. *Vide ante*, p. 987.

I A. B., *clerk to the trustees mentioned in the above order, do hereby certify to the justices of the peace for the [county] [riding] [division] of ———, at their general quarter sessions of the peace, that the above is a true copy of the order made by the said trustees for the purposes therein mentioned. Dated this ——— day of ———.*

A. B.

No. 14.

No. 14.—Agreement by Subscription for advancing Money to make and repair a Turnpike Road or Highway. *Vide ante*, p. 943.

WE whose names are subscribed do agree to advance and pay the several sums written by us opposite to our names, unto ———, to be laid out and expended in the making and repairing a certain highway leading from ——— to ———, after an act of parliament shall be obtained for making the same turnpike road, upon having the tolls to be collected upon such turnpike road assigned and made over to us as a security for the respective sums so to be advanced by us, together with interest for the same after the rate of ——— per centum per annum, which sums we do hereby severally agree to pay, by instalments, in the following manner, viz. *one fourth part thereof on the ——— day of ——— next; one other fourth part* [&c. &c. &c.]. *Dated this ——— day of ———.*

No. 15. — Warrant from a Justice of the Peace to enter the Toll-Gate House, and remove the Persons therein. *Vide ante*, p. 933. 3 G. 4. c. 126. No. 15.

County of ——— } To the [constable, headborough, or tithing-
to wit. } man,] of ———, in the said county.

WHEREAS complaint hath been made unto me A. B. *esquire, one of his majesty's justices of the peace for the said county, upon the oath of* ———, *and other evidence now produced to me, that* C. D., *who now inhabits the turnpike or toll-gate house at* ———, *upon the turnpike road leading from* ——— *to* ———, *and was appointed to collect the tolls there, hath been duly discharged by the trustees of the said turnpike road from any further collecting or receiving the tolls arising at the said gate, and hath refused and still doth refuse to quit the possession of the said house; and the said* C. D. *having been summoned to appear before me this day, to show cause why he should not be removed from the said house, and having shown no sufficient cause for that purpose* [or, *not having appeared*], *I do hereby authorise and require you, with such assistance as shall be necessary, to enter into the said toll house or turnpike house, and the buildings belonging thereto, in the daytime, and to remove the said* C. D. *and all such persons as shall be found therein, together with his and their goods, out of such house and buildings, and to put* E. F., *the person lately appointed by the trustees to collect such tolls, into the possession thereof, for which this shall be your sufficient warrant. Given under my hand and seal, this* ——— *day of* ———.

[This form may be varied to suit the case of the widow or family of a deceased collector.]

No. 16. — Bond from the Surveyor. *Vide ante*, p. 935. No. 16.

WE, A. B., *surveyor of the turnpike roads, under an act passed in the* ——— *year of the reign of king* George *the* ———, For [state the principal part of the title of the act], *and* C. D. *of* ———, *are bound to* E. F. *of* ———, *in the sum of* ——— *pounds, to be paid to the said* E. F., *his executors, administrators, and assigns, for which payment we hereby bind ourselves severally, and each of our heirs, executors, and administrators. Dated the* ——— *day of* ———.

The condition of this bond is such, that if the said A. B., *his executors or administrators shall duly and faithfully account for, apply, and pay all and every the sum and sums of money which hath come or shall come to his hands as surveyor of the turnpike road aforesaid, according to the direction and true intent and meaning of the said act, and of the statute made in the third year of the reign of his majesty king* George *the fourth,* "for regulating turnpike roads," *then this bond to be void, or else to remain in full force.*

[The bond from the treasurer will be in the same form.]

3 G.4. c.126. No. 17.

No. 17. — Summons for any Person or Persons to attend a Justice or Justices. *Vide ante*, p. 1007.

County of ——— } To *A. B.* of ———.
to wit.

WHEREAS complaint and information hath been made before me, C. D., *one of his majesty's justices of the peace for the said* [*county, &c.*] *by* E. F. *of* ———, *that, &c.* [here state the nature and circumstances of the case, as far as it shall be necessary to show the offence, and to bring it within the authority of the justice, and in doing that, follow the words of the act, as near as may be]; *these are therefore to require you personally to appear before me* [or, *the justices to be assembled at their special sessions to be holden*] *at* ———, *in the said* [*county, &c.*] *on the* ——— *day of* ——— *next, at the hour of* ———, *in the* ——— *noon, to answer to the said complaint and information made by the said* E. F., *who is likewise directed to be then and there present, to make good the same. Herein fail not. Given under my hand, this* ——— *day of* ———.

No. 18.

No. 18. — Information. *Vide ante*, p. 1007.

County of ——— } *BE it remembered, that on the* ——— *day of* ———, A. B. *of* ———, *in the said county,*
to wit.

informeth me ———, *one of his majesty's justices of the peace for the said county, that* ——— *of* ———, *in the said county,* [here describe the offence, with the time and place, and follow the words of the act, as near as may be,] *contrary to the statute made in the third year of the reign of king* George *the fourth,* "for regulating turnpike roads," *which hath imposed a forfeiture of* ——— *for the said offence. Taken the* ——— *day of* ———, *before me,*

A. B.

No. 19.

No. 19. — Form of Conviction. *Vide ante*, p. 1007.

County of ——— } *BE it remembered, that on the* ——— *day of* ———, *in the* ——— *year of the reign of*
to wit.

———, *and in the year of our Lord* ———, A. B. *is convicted before me* ———, *one of his majesty's justices of the peace for the said county, for* [here specify the offence, and when and where committed (*a*)], *contrary to the form of the statute made in the* ——— *year of the reign of* ———, *intituled* [here set forth the title of the act (*b*)]; *and I do hereby declare and adjudge that the said* A. B. *hath forfeited, for the said offence, the sum of* ——— [or, *shall be*

(*a*) In specifying the offence, it is necessary to state the place and the county in which it was committed, in order to give the magistrate jurisdiction, by showing it within the county for which he acts. *Rex* v. *Hazell*, 13 *East*, 139. *Kite & Lane's case*, ante.

(*b*) This must be correctly set forth. *Mills* v. *Wilkins*, 2 *Salk.* 609.

committed to ——— for the space of ———, as the case may be]. 3 G.4. c.126.
Given under my hand and seal, the day and year first above written.

C. D.

No. 20.—Warrant to distrain for Forfeiture. (*a*) *Vide ante* p. 1007. No. 20.

To the [constable, headborough, *or* tithingman,] of ———.

County of ——— to wit. } *WHEREAS* A. B. *of ———, in the said county, is this day convicted before me,* C. D. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* G. H., *a credible witness, for that the said* A. B. *hath* [here set forth the offence, describing it particularly in the words of the statute, as near as may be,] (*contrary to the statute in that case made and provided*), *by reason whereof the said* A. B. *hath forfeited the sum of ———, to be distributed as herein is mentioned, which he hath refused to pay; these are therefore in his majesty's name to command you to levy the said sum of ———, by distress of the goods and chattels of him the said* A. B.; *and if within the space of four days next after such distress by you taken, the said sum, together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of ——— to* E. F. *of ———, who informed me of the said offence, and the other half of the said sum of ——— to* I. K., *the surveyor of the turnpike road* [describing it] *where the said offence* [*neglect* or *default*] *happened, to be employed towards the repair of the said road, returning the overplus on demand to him the said* A. B. [*the reasonable charges of taking, keeping, and selling the said distress being first deducted*]; *and if sufficient distress cannot be found of the goods and chattels of the said* A. B. *whereon to levy the said sum of ———, that then you certify the same to me, together with this warrant. Given under my hand and seal, the ——— day of ———.*

C. D.

No. 21. Return of the Constable, to be made upon the Warrant of Distress, where there are no Effects. *Vide ante*, p. 1007. No. 21.

I A. B., *constable of the* [*parish, &c.*] *of ———, in the county of ———, do hereby certify and make oath, that by virtue of this warrant I have made diligent search for the goods of the within-named ———, and that I can find no sufficient goods whereon to levy the within sum of ———. As witness my hand, the ——— day of ———.*

A. B.

Sworn before me, the day and year, &c.

C. D.

(*a*) This must be directed to the proper officer, and executed within his district. See tit. Constable, Vol. I.

3 G.4. c.126. No. 22.

No. 22. — Commitment for Want of Distress. *Vide ante*, p. 1007.

County of ——— to wit.	To the constable of ———, in the said county, and to the keeper of the common gaol [*or*, the house of correction] at ———, in the said county.

WHEREAS A. B. *of* ———, *in the said county, was on the* ——— *day of* ——— *convicted before me*, C. D. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* E. F., *a credible witness, for that he the said* A. B. [here set forth the offence], *contrary to the statute made in the third year of the reign of his majesty king* George *the fourth*, "for regulating turnpike roads," *by reason whereof the said* A. B. *hath forfeited the sum of* ——— : *And whereas on the* ——— *day of* ———, *in the year aforesaid, I did issue my warrant to the* [*constable*] *of* ———, *to levy the said sum of* ———, *by distress and sale of the goods and chattels of him the said* A. B., *and to distribute the same according to the directions of the said statute; and whereas it duly appears to me, upon the oath of the said* [*constable*], *that the said* [*constable*] *hath used his best endeavours to levy the said sum on the goods and chattels of the said* A. B. *as aforesaid, but that no sufficient distress can be had whereon to levy the same; these are therefore to command you, the said* [*constable*] *of* ——— *aforesaid, to apprehend the said* A. B., *and him safely to convey to the common gaol* [or, *house of correction*] *at* ———, *in the said county, and there deliver him to the keeper thereof, together with this precept; and I do also command you the said keeper to receive and keep in your custody the said* A. B. *for the space of three months, unless the said sum shall be sooner paid, pursuant to the said conviction and warrant, and for so doing this shall be your sufficient warrant. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord* ———.

C. D.

No. 23.

No. 23. — Notice of Appeal to the Quarter Sessions. *Vide ante*, p. 1010.

A. B. *take notice, that I intend to appeal to the next general quarter sessions of the peace to be holden for the* [*county, &c.*] *of* ———, *against an order* [*conviction*, or *other proceeding*,] (as the case may be) [particularly specifying the purport of such order, &c. and assigning the grievance and cause of complaint]. *Dated the* ——— *day of* ———. C. D.

Highwayman. See Robbery, Vol. V.

No. 24.—General Statement of the Income and Expenditure of the [*insert the Name of the particular Road*], between the —— Day of ——, and the —— Day of ——. *Vide, ante* p. 767.

EXPENDITURE.	£.	s.	d.	INCOME.	£.	s.	d.
To surveyor's account of day labour, between the —— day of —— and the —— day of ——, for maintenance or repair of roads - - - - -				By balance in treasurer's hands - - -			
To surveyor's account of team labour, between the —— day of —— and the —— day of —— - - -				By amount of rents received from the lessees, or tolls received from the gatekeepers, between the —— day of —— and the —— day of ——, as follows: [*here specify the respective gates, and the different amounts received.*] - - -			
To surveyor's account for work executed by contract, specifying the amount done, and the rate of contract paid - -				By amount of statute labour, between the —— day of —— and the —— day of ——, as follows: [*here specify the amount paid by each parish, hamlet, township, or place.*] -			
To surveyor's accounts for repair, or maintenance, or building of houses, gates, or bridges - - - - - -				By amount of money borrowed on security of tolls [*if any*] -			
To surveyor's account for land purchased, or for damages done -				By incidental receipts - - - -			
To surveyor's account for rent of quarries - - -							
To salaries, and other payments of clerks, surveyors, or other officers - - - - - - - -							
To printing, advertising, and stationery - - -							
To interest of debt - - - - -							
To incidental charges - - - - -							
£.				£.			

General Statement of Debts and Credits.

	£.	s.	d.		£.	s.	d.
An account of the amount of debt bearing interest - -				Arrears of rents [*or* tolls] due, not received, as under: *Insert the names of the lessees* [*or of gates*], *and when due. Also insert any other monies due to the trust on any other account.* -			
An account of interest due - - - -							
An account of floating debt - - - -							
£.				£.			

SCHEDULE (No. II.) Stat. 4 G. 4. c. 95. *Vide ante*, p. 782. C.

No. XXV. — A List, containing the Names of all Persons in the Parish or Place of ————, in the ————, who are liable to do Statute Work, and to the Payment of Composition in lieu thereof, for the Year commencing from

(Signed)

Surveyors of the said Parish or Place.

1.	2.	3.	4.	5.	6.	7.
Names of Persons liable.	No. of Horses kept.	Full Annual Value.	Rate of Composition.	Total Amount liable in Money.	No. of Days' Duty Work.	General Observations.
		£. s. d.				

Homicide.

HOMICIDE in law, signifies the killing of a man by a man. 1 *Haw. c.* 26. § 2.

And it includes in it not only petit treason, concerning which title see **Treason**, but also the several offences which are treated of in the following sections.

There is also another kind of untimely death of a man, not properly homicide; when he is killed by a horse, a cart, a tree, or the like, and not by a man, which is called casual death; for which see title **Deodand**, Vol. I.

§ I. Justifiable Homicide.

To make homicide justifiable, it must be owing to some unavoidable necessity, to which the person who kills another must be reduced, without any manner of fault in himself. 1 *Haw. c.* 28. § 1. **On a real necessity.**

And there must be no malice coloured under pretence of necessity; for wherever a person who kills another acts in truth upon malice, and takes occasion from the appearance of necessity to execute his own private revenge, he is guilty of murder. 1 *Haw. c.* 28. § 2.

24 H. 8. c. 5. Killing robbers and burglars. By stat. 24 *H.* 8. *c.* 5. If any evil disposed person shall attempt feloniously to rob or murder any person in any dwelling-house or highway, or feloniously attempt to break any dwelling-house in the night-time, and shall happen in such felonious intent to be slain, the slayer shall forfeit no lands or goods, and shall for the same be fully acquitted and discharged. See 1 *East, P. C.* 272. 1 *Russ.* 790.

Trespassers in parks. If trespassers in a forest, chase, park, or warren, or any inclosed ground wherein deer are kept, will not render themselves to the keepers, upon a hue and cry made to stand to the king's peace, but fly from or defend themselves against them, they may be slain by force of the statute 21 *Ed.* 1. *de Malefactoribus in Parcis,* and

3 & 4 *W. & M. c.* 10. § 5. 1 *Haw. c.* 28. § 15. 1 *East, P. C.* 256. 1 *Russ.* 788.

Rioters. If rioters, or forcible enterers or detainers, stand in opposition to the justices' lawful warrant, and any of them be slain; it is no felony. *Hale's Sum.* 37.

So if they stand in opposition to the sheriff's *posse commitatus.* Vide stats. 13 *H.* 4. *c.* 7. 2 *H.* 5. *c.* 8. 1 *Hale,* 53.

And if the sheriff or magistrate, or any one coming in aid of them, be killed, it is murder in all. *Cromp.* 22. 1 *MS. Sum.* 219.

House burners. If a man come to burn my house, and I shoot out of my house, or issue out of my house, and kill him; it is no felony. *Hale's Sum.* 39.

Ravishers. A. makes an assault upon B., a woman or maid, with intent to ravish her, she kills him in the attempt, it is *se defendendo;* because he intended to commit a felony. 1 *Hale,* 485. *Hale's Sum.* 39.

Felons refusing to be arrested. If a person having actually committed a felony will not suffer himself to be arrested, but stand on his own defence, or fly, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons or public officers with or without a warrant from a magistrate, he may be lawfully slain by them. 1 *Haw. c.* 28. § 11.

Suspected felon refusing to be arrested. So if a felony hath actually been committed, and an officer or minister of justice having lawful warrant so to do, arrest an innocent person, and such person assault the officer or minister of justice, the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but in striving kill him; it is no felony. And in that case, the officer or minister of justice shall forfeit nothing; but the party who so assaulted or offered to fly away, and is killed, shall forfeit his goods. 3 *Inst.* 56.

Felon escaping. Also if a person arrested for felony break away from his conductors to gaol, they may kill him, if they cannot otherwise take him. But in this case, likewise, there must have been a felony actually committed. *Hale's Sum.* 36, 37.

Felon breaking gaol. Also if a criminal endeavouring to break the gaol assault his gaoler, he may be lawfully killed by him in the fray. 1 *Haw. c.* 28. § 13.

Resisting a civil process. In civil causes, although the sheriff cannot kill a man who flies from the execution of a civil process, yet if he resist the arrest, the sheriff or his officer need not give back, but may kill the assailant. *Hale's Sum.* 37.

So if in the arrest and striving together the officer kill him, it is no felony. *Hale's Sum.* 37.

Notice on process. The party must have some notification of the officer's business, or the killing of him will not be murder. (1 *East's P. C.* 319., and the authorities there cited.) If he be a known sworn officer, the law in the instances above mentioned will imply notice: if he be a special bailiff named in the process, he must declare his business and authority, as by using words of arrest or the like: and if such declaration be true and the process legal, and afterwards he be killed, it is murder: for after that declaration the party killing acted at his peril. But if the officer declare his business, it is not necessary he should produce the warrant itself where it is not demanded. It is also said, that if a bailiff or constable be sworn

and commonly known to be such, and act within his own precinct, he need not show his warrant to the party, though he demand a sight of it, but the officer ought to tell him the substance of it; but that all others, or these, if acting out of their precincts, ought to show it if demanded. If this be understood merely of the warrant constituting him bailiff or constable, it may be true under the circumstances before noticed: but with respect to the writ or process itself against the party, there is no difference between the public or private bailiff; for in either case, if the party submit to the arrest and demand it, he is bound to show at whose suit, for what cause, out of what court the process issues, and when and where returnable. In no case, however, is he required to part with the warrant out of his own possession, for that is his justification. *See* 8 *T. R.* 188.

Warrant to arrest should be shown, but not parted with.

Arrest to be duly made.

If the warrant be directed to several, any of them may execute it. And in no case of arrest is a constable bound to carry a prisoner before a particular magistrate desired by the prisoner himself, but he may follow his own discretion; unless the warrant be special, and direct otherwise. 1 *Hale*, 459. 5 *Rep.* 59. 1 *East's P. C.* 320.

If the officer in executing his office exceed his authority, the law gives him no protection in that excess. And it not only behoves the ministers of justice and other public officers, but likewise private persons endeavouring to arrest or imprison in the several cases already specified, to be very careful that they do not misbehave themselves in the discharge of their duty; for if they do they may forfeit this special protection. 1 *MS. Sum.* 170. *Fost.* 319. 1 *East's P. C.* 320.

Trial and discharge.

In all these cases the party upon arraingment having pleaded not guilty, the special matter must be found; whereupon the party shall be dismissed without any forfeiture, or pardon purchased. *Hale's Sum.* 38.

§ II. Homicide by Misadventure.

Chancemedly.

I have purposely avoided the word *chancemedly* in this place, because authors do not seem to be agreed whether it is to be applied to homicide *by misadventure*, or to *manslaughter*. Ld. *Coke* and Mr. *Hawkins* seem to understand it of *manslaughter;* Ld *Hale*, and others, of homicide *by misadventure*. The original meaning of the word seems to favour the former opinion, as it signifies a sudden or casual meddling or contention; whereas homicide *by misadventure* supposeth no previous meddling or falling out. But the same author sometimes in different places applies it to both of them promiscuously.

What is homicide by misadventure.

Homicide by misadventure is where a man is doing a *lawful* act, without intent to hurt another, and death casually ensues. *Hale's Sum.* 31. 1 *East's P. C.* 221.

Cases of homicide by misadventure.

As where a labourer being at work with a hatchet, the head flies off, and kills one who stands by. Or where a third person whips a horse, on which a man is riding, whereupon he springs out and runs over a child, and kills him; in which case the rider is guilty of homicide by misadventure, and he who gave the blow, of manslaughter. 1 *Haw.* c. 29. § 3.

But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide, and not by misadventure; and if he ride so, in a press of people, with intent to do hurt, and the horse killeth another, it is murder in the rider. 1 *Hale*, 476.

Lawful acts must be done with caution.

It is not sufficient that the act upon which death ensues be lawful and innocent in itself. It must be done in a proper manner, and with due caution to prevent mischief. *Fost.* 262. 1 *East's P. C.* 261.

Correction *in foro domestico.*

Thus parents, masters, and other persons having authority *in foro domestico*, may give reasonable correction to those under their care: and if death ensue from such correction, it will be no more than accidental death. But if the correction exceed the bounds of due moderation, either in the measure of it, or in the instrument made use of for that purpose, it will be either murder or manslaughter, according to the circumstances. If done with a cudgel, or other thing not likely to kill, though improper for the purpose of correction, it will be manslaughter; if with a dangerous weapon likely to kill or maim, as a pestle or great staff, it will be murder: due regard being had in both instances to the age and strength of the party. 1 *East's P. C.* 261.

Grey, a blacksmith, struck his servant with a bar of iron by way of correction for improper behaviour, by which he was killed; held murder. A woman kicked and stamped on the belly of her child; and ruled the same. *Grey's Case, Kel.* 64, 5. 1 *East's P. C.* 261.

Yet though the correction exceed the bounds of moderation, the court will pay a tender regard to the nature of the provocation, where the act is manifestly accompanied with a good intent, and the instrument not such as must in all probability occasion death; though the party were hurried to great excess. As was the case of a father, (*Worcester Sp. Ass.* 1775.) whose son had frequently been guilty of stealing, complaints of which had come to the father, who had often corrected him. At length the son being charged with another theft, and resolutely denying it, though proved against him, the father in a passion beat his son with a rope by way of chastisement for the offence so much, that he died. The father expressed the utmost horror, and was in the greatest affliction for what he had done, intending only to have punished him with such severity as to have cured him of his wickedness. The learned judge who tried the father consulted his colleagues in office and the principal counsel on the circuit, who all concurred in opinion that it was only manslaughter, and so it was ruled. 1 *East's P. C.* 261.

Accidents in common occupations.

Accidents frequently occur amongst persons following their lawful occupations, especially such from whence danger may probably arise. If they saw the danger, and yet persisted without sufficient warning, it will be murder. If the act were such as was likely to breed danger, and they neglected the ordinary cautions, it will be manslaughter at least, on account of such negligence; making due allowance for the nature of the occupation, and the probability of the danger; which if very remote, and in the particular instance not reasonably to be expected, may reduce the act to misadventure. The criterion in such cases is to examine whether common social duty would, under the circumstances, have suggested a more circumspect conduct.

For instance, in the case of workmen throwing stones and rubbish from an house in the ordinary course of their business, by which a person underneath happens to be killed; if they deliberately saw the danger, or betrayed any consciousness of it, from whence a general malignity of heart might be inferred, and yet gave no warning, it will be murder, on account of the gross impropriety of the act. If they did not look out, or not till it was too late, and there was even a small probability of persons passing by, it will be manslaughter. But if it had been in a retired place, where there was no probability of persons passing by, and none had been seen about the spot before, it seems to be no more than accidental death. For though the act itself might breed danger, yet the degree of caution requisite being only in proportion to the apparent necessity of it, and there being no apparent call for it in the instance put, the rule applies, *de non existentibus et non apparentibus eadem est ratio*. So if any person had been before seen on the spot, but due warning were given, it will be only misadventure. (*Hull's* case, 1664. *Kel.* 40. 1 *Russ.* 769.) On the other hand, in *London* and other populous towns, at a time of day when the streets are usually thronged, it would be manslaughter, notwithstanding the ordinary caution used on other occasions of giving warning; for in the hurry and noise of a crowded street few people hear the warning or sufficiently attend to it, however loud. 1 *East's P. C.* 262. **Workmen throwing rubbish.**

Again, a person driving a carriage happens to kill another: if he saw or had timely notice of the mischief likely to ensue, and yet wilfully drove on, it will be murder; for the presumption of malice arises from the doing of a dangerous act intentionally: there is the heart regardless of social duty. If he might have seen the danger, but did not look before him, it will be manslaughter, for want of due circumspection. But if the accident happened in such a manner that no want of due care could be imputed to the driver, it will be accidental death, and he will be excused. 1 *East's P. C.* 263. **In driving carriages.**

A. was driving a cart with four horses in the highway at *Whitechapel;* and he being in the cart, and the horses upon a trot, they threw down a woman who was going the same way with a burthen upon her head, and killed her. *Holt* C. J., *Tracy* J., Baron *Bury*, and the recorder *Lovel*, held this to be only misadventure. But, by Lord *Holt*, if it had been in a street where people usually pass, this had been manslaughter; but it was clearly agreed that it could not be murder. *O. B. Sess. before M. T.* 1704. 1 *East's P. C.* 263.

It has already been observed that this homicide only is when it happeneth upon a man's doing a lawful act; for if the act be done in the prosecution of a felonious intention it will be murder. 1 *Russ.* 660, 661.

But it seems that in cases of this kind the guilt would rather depend upon one or other of these circumstances, either that the act might probably breed danger, or that it was done with a mischievous intent. 1 *Russ.* 756.

When sports are unlawful in themselves, or productive of danger, riot, or disorder, so as to endanger the peace, and death ensue in the pursuit of them, the party killing is guilty of manslaughter. Such manly sports and exercise as tend to give **Death happening at unlawful sports.**

Death happening at unlawful sports.

strength, activity, and skill in the use of arms, and are entered into as private recreations amongst friends, are not, however, deemed unlawful sports: but prize-fighting, public boxing matches, or any other sports of a similar kind, which are exhibited for lucre, and tend to encourage idleness by drawing together a number of disorderly people, have met with a different consideration. For in these last mentioned cases the intention of the parties is not innocent in itself, each being careless of what hurt may be given, provided the promised reward or applause be obtained, and meetings of this kind have also a strong tendency in their nature to a breach of the peace. Therefore, where the prisoner had killed his opponent in a boxing match, it was holden that he was guilty of manslaughter; though he had been challenged to fight by his adversary for a public trial of skill in boxing, and was also urged to engage by taunts; and the occasion was sudden, &c. *Ward's case, O. B.* 1789. 1 *East's P. C.* 270. and see 1 *Russ.* 756, 757. *and the authorities there cited.*

The rule before laid down supposeth that the act, from which death ensued, was *malum in se*. For if it were barely *malum prohibitum*, as shooting at game by a person not qualified by statute law to keep or use a gun for that purpose, the case of a person so offending will fall under the same rule as that of a qualified man. For the statutes prohibiting the destruction of the game, under certain penalties, will not in a question of this kind enhance the accident beyond its intrinsic moment. *Fost.* 259.

Further, if there be an evil intent, though that intent extendeth not to death, it is murder. Thus, if a man, knowing that many people are in the street, throw a stone over a wall, intending only to frighten them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, though that intent extended not to death, and though he knew not the party slain. 3 *Inst.* 57.

A gentleman came to town in a chaise, and before he got out of it fired his pistols in the street, which by accident killed a woman. This was ruled manslaughter: the act was likely to breed danger, and manifestly improper. *Burton's case*, 1 *Str.* 481. 1 *East's P. C.* 266.

The law does not require the utmost caution that can be used; it is sufficient that a reasonable precaution, what is usual and ordinary in the like cases, be taken; such as hath been found by long experience in the course of human affairs to answer the end: for such conduct shows that the party was regardful of social duty, and free from any manner of guilt. *Fost.* 264. 1 *East's P. C.* 266. And, therefore, upon that principle, Mr. Justice *Foster* denies *Rampton's* case, *Kel.* 41. to be law: and, indeed, there is a quære put to it in the margin of the reporter. The prisoner had found a pistol in the street, which he had reason to believe was not loaded, having tried it with the rammer, which had gone down into the muzzle of the pistol; the rammer, in fact, being too short. He carried the pistol home, and his wife standing before him, he cocked it and touched the trigger; on which the pistol went off and killed the woman. This was ruled manslaughter. In truth, the man had used the ordinary precaution, adapted to the probability of danger in such cases: he had examined the pistol by the usual method of trial. And though it was doubtless an idle

frolic, yet the heart was free from all sort of guilt, even the guilt of negligence; and therefore the act ought to have been excused. And the same learned judge determined accordingly in a case something similar.

Upon a *Sunday* morning a man and his wife going to dine at a friend's house in the neighbourhood, he carried his gun with him, to divert himself on his way; but before dinner he discharged it, and set it up in a private place in his friend's house. After dinner he went to church, and in the evening returned home with his wife and neighbours, bringing his gun with him; which was put into the room where his wife was, she having brought it part of the way. He taking it up touched the trigger, and the gun went off, and killed his wife. It came out in evidence, that while the man was at church, a person belonging to the family privately charged the gun, and went after some game; but before the service at church was ended, returned it loaded to the place from whence he had taken it; and where the defendant, who was ignorant of all that had passed, found it to all appearance as he had left it. Mr. Justice *Foster* thought it unnecessary to inquire whether the man had examined the gun before he carried it home; but being of opinion upon the whole evidence that he had reasonable grounds to believe that it was not loaded, he directed the jury that if they were of the same opinion, they should acquit him: and he was acquitted. *Fost.* 265.

It is a general rule in case of all felonies that wherever a man intending to commit one felony happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw. c.* 29. § 11.

But in all the cases above, if it doth only hurt a man by such an accident, it is nevertheless a trespass; and the person hurt shall recover his damages: for though the chance excuse from felony, yet it excuseth not from trespass. 1 *Hale*, 472.

Escape. If a person escape that hath killed another by misadventure, the town shall be amerced. 2 *Inst.* 149.

This kind of homicide no felony. This homicide is not felony, because it is not accompanied with a felonious intent, which is necessary in every felony. 1 *Haw. c.* 29. § 11.

Bail. But yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the assizes. 1 *Haw. c.* 29. § 23.

But if he be taken only on a slight suspicion, the justices of the peace may bail him. 2 *Haw. c.* 15. § 62.

Forfeiture. Although this homicide is not properly a man's crime, but his misfortune, yet because the king hath lost his subject, and in respect of the great favour the law hath to the life of man, and to the end that men should use all care, diligence and circumspection, in all they do, that no hurt should come of their actions, a person convicted hereof shall forfeit his goods, and shall not presently be discharged of his imprisonment, but bailed, that he may sue out his pardon, which he shall have out of the chancery of course. 1 *Hale*, 477. 492.

But the practice now is to direct an acquittal, without obliging the prisoner, by a special proceeding, to purchase his pardon under the stat. of *Gloucester*, and no forfeiture is incurred.

§ III. Homicide by Self-defence.

Se defendendo, what.

Homicide in a man's own defence seems to be, where one, who hath no other possible means of preserving his life from one who combats with him on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. 1 *Haw.* c. 29. § 13.

Cases of *se defendendo.*

And not only he, who upon an assault retreats to a wall, or some such strait, beyond which he can go no further before he kills the other, is judged by the law to act upon unavoidable necessity, but also he, who being assaulted in such a manner and in such a place that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 1 *Haw.* c. 29. § 14.

And notwithstanding a person, who retreats from an assault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only. 1 *Haw.* c. 29. § 14.

But if the mortal wound were first given, then it is manslaughter. *Hale's Sum.* 42.

And an officer who kills one that resists him in the execution of his office, and even a private person that kills one who feloniously assaults him in the highway, may justify the fact without ever giving back at all. 1 *Haw.* c. 29. § 16.

But if a person upon malice *prepense* strike another, and then fly to the wall, and there in his own defence kill the other, this is murder. *Hale's Sum.* 42.

Accessaries.

Hereof there can be no accessaries either before or after the fact, because it is not done with a felonious intent, but upon inevitable necessity. 3 *Inst.* 56.

Escape.

If a man escape, that hath killed another in his own defence, the town shall be amerced. 2 *Inst.* 315.

Bail.

A person guilty hereof is not bailable by justices of the peace; but they must commit him till the assizes. 1 *Haw.* c. 29. § 23.

Power of justices of the peace.

But otherwise it is, if he be taken only on a slight suspicion. 2 *Haw.* c. 15. § 62.

Lord *Coke* (2 *Inst.* 316.) says, that the justices of the peace cannot take an indictment of killing a man *se defendendo;* because their commission is not general, as is that of the justices of gaol delivery, but limited. But Ld. *Hale* (2 *Hale* 46.) holds the contrary.

Forfeiture.

A person convicted hereof shall not be discharged out of prison but upon bail, and shall forfeit all his goods, although the cause were inevitable: And this because of the great regard which the law hath for the life of man; and also by reason that the law intends it had a beginning upon an unlawful cause; for quarrels are not presumed to grow without some wrongs in words or deeds, and so malice on both sides. But he shall have his pardon out of the chancery of course. 3 *Inst.* 56. 1 *Haw.* c. 29. § 25.

The practice, however, is now to direct the jury to acquit the prisoner generally; without obliging him by a special finding, to purchase his pardon under the stat. of *Gloucester,* c. 9. and no forfeiture is incurred.

Flight.

If a man be indicted for homicide *se defendendo,* and is found not guilty, yet if it be found that he fled for the same, he shall

forfeit his goods for such flight, in not standing to the law of the land. 1 *Hale*, 493.

§ IV. Manslaughter.

Manslaughter is thus defined, the unlawful killing of another without malice either express or implied: which may be either voluntarily, upon a sudden heat; or involuntarily, but in the commission of some unlawful act. 4 *Blac. Com.* 191. 1 *Hale*, 466. 1 *Haw. c.* 30. § 1. 1 *East's P. C.* 218. **Manslaughter, what.**

There is no difference between murder and manslaughter, but that murder is upon malice forethought, and manslaughter upon a sudden occasion. As if two meet together, and striving for the wall, the one kill the other, this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given. 3 *Inst.* 55. **Without malice.**

There can be no accessaries to this offence before the fact, because it must be done without premeditation. 1 *Haw. c.* 30. § 2. 1 *East's P. C.* 218. **Accessaries.**

But there may be accessaries after the fact. 3 *Inst.* 55.

This offence is not bailable by justices of the peace. 3 *Ed.* 1. *c.* 15. **Bail.**

It is within the benefit of clergy; but the offender shall forfeit as in other felonies. 2 *Hale*, 344. **Clergy.**

By stat. 3 *G.* 4. *c.* 38. § 1. After reciting, that the punishment of burning in the hand has long been deemed ineffectual and inexpedient, and the other punishments which may by law be inflicted upon persons convicted of the offence of manslaughter are frequently inadequate to the aggravated circumstances of such offence; it is enacted that "whenever any person shall be lawfully convicted of the offence of manslaughter, such person shall not be liable to be burned or marked in the hand, or in any part thereof, but such person shall be liable to be transported beyond the seas for the term of his or her natural life, or for any term of years, as the court before which any such person shall be convicted shall adjudge; or shall be liable, in case the said court shall think fit, to be imprisoned only, or to be imprisoned and kept to hard labour, in the common gaol, house of correction, or penitentiary house, for any term not exceeding three years; or shall be liable to such a pecuniary fine, as to the said court, in its discretion, shall seem meet; and such fine or other punishment imposed by virtue of this act shall have the like effects and consequences to the party on whom such fine or other punishment shall be so imposed, with respect to any discharge from the same or other felonies, or any restitution to his or her estates, capacities, and credits, as if he or she had continued liable to the former punishment of burning or marking in the hand, and had suffered such former punishment." **3 G. 4. c. 38. Punishment.** **Persons convicted of manslaughter may be transported, or imprisoned at discretion of the court.**

There is one kind of manslaughter, which by stat. 1 *J.* 1. *c.* 8. is excluded the benefit of clergy; *viz.* He who shall stab or thrust any person that hath not then any weapon drawn, or hath not then stricken first, so as the person so stabbed or thrust shall **Stabbing.**

die thereof in six months, although it cannot be proved that the same was done of malice forethought, shall be guilty of felony without benefit of clergy. *See Ev. Col. Stat.*, *Part* V. *Cl.* iv. *no.* 16.

43 G. 3. c. 58. Ld. Ellenborough's act.

But by stat. 43 *G.* 3. *c.* 58. § 1. If any person shall after 1st *July* 1803, wilfully, maliciously, and unlawfully shoot at any of H. M.'s subjects; or wilfully, maliciously, and unlawfully present, point, or level any kind of loaded fire-arms at any of H. M.'s subjects, and attempt by drawing a trigger or in any other manner to discharge the same at or against his person; or shall wilfully, maliciously, and unlawfully, stab, or cut any of H. M.'s subjects, with intent in so doing, or by means thereof, to murder or rob, or to maim, disfigure, or disable such person, or with intent to do him some other grievous bodily harm, or with intent to obstruct, resist, or prevent the lawful apprehension and detainer of the person so stabbing or cutting, or of any of his accomplices, for any offences for which he or they may respectively be liable by law to be apprehended, imprisoned, or detained; in every such case the person so offending, his counsellors, aiders, and abettors, shall suffer death as in cases of felony without benefit of clergy.

Provided, that if it shall appear at the trial that such acts of stabbing or cutting were committed under such circumstances as that if death had ensued therefrom the same would not in law have amounted to murder, then the person so indicted shall be acquitted. *See* Vol. I. *tit.* Black Act.

§ V. Murder.

Murder, what.

Murder is, when a man of sound memory, and of the age of discretion, unlawfully killeth any person under the king's peace, with malice forethought, either expressed by the party, or implied by law, so that the party wounded or hurt die of the wound or hurt, within a year and a day. 3 *Inst.* 47.

Malice expressed.

By *malice expressed*, is meant a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorised. 1 *Hale* 451.

And the evidences of such a malice must arise from external circumstances discovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compassings, and the like, which are various, according to variety of circumstances. 1 *Hale's Sum.* 51.

Malice implied.

Malice implied is in several cases; as when one voluntarily kills another without any provocation; for in this case the law presumes it to be malicious, and that he is a public enemy of mankind. 1 *Hale*, 455, 456.

Poisoning also implies malice, because it is an act of deliberation. 1 *Hale*, 455.

Also when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 *Hale*, 457.

Also where a prisoner dies by duress of the gaoler, the law implies malice, by reason of the cruelty. 3 *Inst.* 52.

Malice prepense.

And in general, any formed design of doing mischief may be called malice, and therefore not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to

be of malice *prepense*, and, consequently, murder. 2 *Haw. c.* 31. § 18. 2 *Str.* 766.

For when the law makes use of the term *malice aforethought*, as descriptive of the crime of murder, it is not to be understood in that narrow restrained sense to which the modern use of the word *malice* is apt to lead one, *a principle of malevolence to particulars*; for the law by the term *malice* (*malitia*) in this instance meaneth, that the fact hath been attended with such circumstances as are the ordinary symptoms of a wicked heart, regardless of social duty, and fatally bent upon mischief. *Fost.* 256, 257. **Malice aforethought.**

And wherever it appears that a man killed another, it shall be intended *primâ facie*, that he did it maliciously, unless he can make out the contrary, by shewing that he did it on a sudden provocation, or the like. 1 *Haw. c.* 31. § 32.

Also wherever a person in cool blood, by way of revenge, beats another in such a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone so far. 1 *Haw. c.* 31. § 38. **Beating a person in cold blood.**

Wherever there is found to be actual malice, or a wilful disposition to injure another, or an obstinate perseverance in doing an act necessarily attended with danger, without regard to the consequences, as if a master by premeditated negligence, or harsh usage, cause the death of his apprentice, it will be murder. 1 *Russ.* 620. **By negligence and harsh usage towards an apprentice.**

Thus, where the prisoner, upon his apprentice returning to him from *Bridewell*, whither he had been sent for misbehaviour, in a lousy and distempered condition, did not take that care of him which his situation required, and which he might have done; not having suffered him to be in a bed on account of the vermin, but having made him lie on the boards for some time without covering, and without common medical care; and the death of the apprentice, in the opinion of the medical persons who were examined, was most probably occasioned by his ill treatment in *Bridewell*, and the want of care when he went home, and the medical persons inclined to think that, if he had been properly treated when he came home, he might have recovered; the Court under these circumstances, and others in favour of the prisoner, left it to the jury to consider, whether the death of the apprentice was occasioned by the ill-treatment he received from his master after returning from *Bridewell*, and whether that ill-treatment amounted to evidence of malice; in which case they were to find him guilty of murder. The prisoner was found guilty of manslaughter.

And in a more modern case a prisoner was found guilty of murder in causing the death of his apprentice, by not providing him with sufficient food and nourishment. *Self's case. O. B. Feb.* 1776. 1 *East's P. C.* 226. 1 *Leach*, 137.

R. v. *Squire and his wife*, *Stafford Lent Assizes*, 1799. *Cor. Lawrence J. M.S.* The prisoner *Charles Squire*, and *Hannah*, his wife, were indicted at *Stafford Lent Assizes*, 1799, for the murder of *Joseph Green*, a parish apprentice, bound to the prisoner *Charles*. It was proved that both the prisoners had treated the apprentice in a most cruel and barbarous manner for a considerable length of time, by tying a cord round his middle when naked, and taking him to a brook, and drawing him by the rope up and down the brook over head; by beating him naked with a twisted cord; by throwing **Rex v. Squire and Wife.**

Rex v. Squire and wife.

flashes und sparks of fire from red hot iron rods upon him when only in his shirt; by beating him with a red hot iron rod and burning him; by repeated beatings with files, hammers, and sharp instruments, and with rods and fist, so that he was seldom without burns, cuts, wounds, and black eyes; by suspending him naked by a cord round his middle to a beam on the top of the shop with one leg tied to the other thigh, and the great toe of the other just touching the ground, and his hands buckled behind; by suspending him by the heels by a cord tied round his ancles up to the beam, and hanging with his head towards the ground, but not touching it, and his hands tied behind him, so that he was black in the face, and blood gushed out at his mouth, and leaving him in the shop in that situation and locking the door, so that he was speechless, and must inevitably have died, if a boy who passed by had not got the key, and gone into the shop and cut him down; by tying him and placing him on his naked back upon the floor in a small room all night, and other acts of inhuman barbarity; and, lastly, by not giving him sufficient food and nourishment. The surgeon, who had examined the boy, and had seen him before, deposed, that in his judgment the boy died from debility, and for want of proper food and nourishment, and not from the wounds, &c. which he had received; and while the learned judge was proceeding to examine the surgeon whether in his judgment the series of cruel usage the boy had received might not have so far broken his constitution as to promote the debility and co-operate, along with the want of proper food and nourishment, to bring on his death, the surgeon was seized with a fainting fit, and was obliged to be taken out of court, and could not afterwards attend. Mr. J. *Lawrence* called up *Williams* Serjt. and *Ryder*, who were of counsel for the prosecution, and stated his doubts, that, as it did not appear from the evidence of the surgeon that the death was occasioned by those acts of violence in which the wife was proved to have been as active as her husband, but, on the contrary, the death was not occasioned by them, and as unfortunately there was no evidence on the point the learned judge was inquiring into, by the accident that happened to the surgeon, the case was short as to the wife: *for she being the servant of her husband, and, therefore, it not being her duty to provide the apprentice with sufficient food and nourishment, she was not guilty of any breach of duty in not providing him therewith. If, indeed, the husband had allowed her sufficient food for the apprentice, and she wilfully withheld it from him, then she would be guilty.* (Mrs. *Ridley's* case, 2 *Camp.* 650.; and see Vol. I. tit. Apprentice, p. 173. *n.* (*a.*) But here the fact was otherwise, and, therefore, though *in foro conscientiæ*, she is equally guilty with her husband, yet, in point of law, she cannot be said to be guilty of not providing the apprentice with sufficient food and nourishment. *Williams* Serjt. thereupon asked the judge, what he should have done if no surgeon had examined the body of the boy? To which he answered, that in such case he must have left it to the jury in the best manner he could: but here a surgeon having examined the body, and given his opinion of the cause of the death, which went to negative that it proceeded from the wounds, &c., he could not leave it to the jury, and, indeed, had nothing to leave. That if any physician or surgeon were present who had heard the trial, he might be examined as to the point in-

tended to be inquired into; but upon inquiry no such person being present, the learned judge delivered his opinion to the jury as before stated respecting the wife, and they accordingly acquitted her, and found the husband guilty. Rex v. Squire and wife.

N. B. He was executed at *Stafford*, on *Monday*, the 1st of *April*, 1799.

No affront will justify murder.

And it seems to be agreed that no breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious it may be, and aggravated with the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby as immediately to attack the person who offends him in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault, whether the person slain did at all fight in his defence or not. 1 *Haw. c.* 31. § 33.

Persons killed by passion, grief, or fear.

If a man by harsh and unkind usage put another into such a passion of grief or fear, that the party either die suddenly, or contract some disease whereof he dies, though this may be murder or manslaughter in the sight of God, yet in a human judicature, it cannot come under the judgment of felony, because no external act of violence was offered whereof the law can take notice. 1 *Hale*, 429. 1 *East's P. C.* 225.

Duelling after a sudden quarrel.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch their weapon and go into the field, and therein fight, and the one killeth the other, this is no malice prepense; for the fetching of the weapon and going into the field is but a continuance of the sudden falling out, and the blood was never cooled. But if there were deliberation, as that they met the next day, nay, though it were the same day, if there were such a competent distance of time that in common presumption they had time of deliberation, then it is murder. 3 *Inst.* 51. 1 *Hale*, 453.

Duelling in cold blood.

And the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds are guilty of murder, whether they fought or not. And it is holden that the seconds of the party slain are likewise guilty as accessaries. 1 *Haw. c.* 31. § 31. 1 *East's P. C.* 242.

Physician giving a potion which causes death.

If a physician or surgeon give a person a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a disease, and, contrary to the physician's or surgeon's expectation, it kills him, this is not homicide. And Ld. *Hale* says, he holds their opinion to be erroneous, who think that if he be no licensed surgeon or physician that occasioneth this mischance, that then it is felony. These opinions (he says) may caution ignorant people not to be too busy in this kind of tampering with physic, but are no safe rule for a judge or jury to go by. 1 *Hale*, 429.

Giving a potion to cause abortion.

But if a woman be with child, and any give her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given her to cure her of a disease, but unlawfully to destroy the child within her; and, therefore, he that gives her a potion to this end, must take the hazard, and if it kills the mother, it is murder. 1 *Hale*, 430.

43 G. 3. c. 58.

And by stat. 43 *G.* 3. *c.* 58. § 2. Wilfully, maliciously, and unlawfully to administer to, or cause to be administered to any of

43 G.3. c.58. § 2. H. M.'s subjects, any deadly poison, or other noxious or destructive substance or thing, with intent such person thereby to murder, or thereby to cause and procure miscarriage of any woman then being quick with child, is felony without clergy. And to administer any medicines to procure the miscarriage of any woman not quick with child is felony; and the offender may be fined, imprisoned, set in the pillory (*a*), publicly or privately whipped, or suffer one or more of those punishments, or be transported for 14 years. See Vol. I. *tit.* Black Act (*Lord Ellenborough's act.*)

Also if a woman be quick with child, and by a potion or otherwise killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child, this is great misprision, but no murder; but if the child be born alive, and dieth of the potion, battery, or other cause, this is murder. 3 *Inst.* 50.

Ld. *Hale* says, that in this case it cannot legally be known whether the child were killed or not; and that if the child die, after it is born and baptized, of the stroke given to the mother, yet it is not homicide. (1 *Hale,* 443.) And Mr. *Dalton* says, whether it die within her body or shortly after her delivery, it maketh no difference. (*Dalt. c.* 145. p. 332.) But Mr. *Hawkins* says, that (in this latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary. 1 *Haw. c.* 31. § 16.

Counselling a woman to kill her child. It seems agreed that where one counsels a woman to kill her child when it shall be born, who afterwards doth kill it in pursuance of such advice, he is an accessary to the murder. 1 *Haw. c.* 31. § 17.

He who kills another upon his desire or command is, in the judgment of the law, as much a murderer as if he had done it merely of his own head. 1 *Haw. c.* 27. § 6. — *Sawyer's case, O. B.* 1815. S. P. *M. S.* — 1 *Russ.* 617.

Keeping unruly cattle. Ld. *Hale* says, if a man have a beast, as a bull, cow, horse, or dog, used to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it.

If he have no particular notice that it did any such thing before, yet if it is *feræ naturæ,* as a lion, a bear, a wolf, yea, an ape, or a monkey, if it get loose and do harm to any person, the owner is liable to an action for the damage.

If he have notice of the quality of any such his beast, and use all due diligence to keep him up, and yet he breaks loose and kills a man, this is no felony in the owner, but the beast is a deodand.

But if he did not use that due diligence, but through negligence the beast goes abroad, after warning or notice of his condition, and kill a man, he thinks it is manslaughter in the owner.

But if he did purposely let him loose or wander abroad, with design to do mischief, nay though it were with design only to fright people and make sport, and it kills a man, it is murder in the owner. 1 *Hale,* 431.

Persons present when murder is committed. They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned. 3 *Inst.* 53.

Escape. If a murder be committed in the day time in a town not inclosed, and the murderer escape, the township shall be amerced:

(*a*) Abolished by stat. 56 *G.*3. *c.*128., in all cases except perjury and subornation thereof. See Vol. III. tit. Perjury.

but if inclosed, whether the murder be in the night or day, the town shall be amerced. 3 *Inst.* 53.

By stat. 2 & 3 *Ed.* 6. *c.* 24. § 2. Where any person shall be feloniously stricken or poisoned in one county and die in another county, the offender may be indicted in the county where the party dies, before the coroner, justices of the peace, or other justices.

Where the stroke is in one county and the death in another.

§ 4. Where a murder is committed in one county, and a person is accessary in another county, he may be indicted in the county where he was accessary, on certificate of the conviction of the principal in the county where he committed the murder.

Where the principal committeth the offence in one county, and the accessary in another.

By stat. 2 *G.* 2. *c.* 21. If any person be feloniously stricken or poisoned upon the sea, or out of *England*, and shall die of the same in *England*; or shall be feloniously stricken or poisoned in *England*, and shall die of the same on the sea or out of *England*; the offenders and accessaries may be indicted in the county where any such death stroke or poisoning shall happen, before the coroner, justices of the peace, or other justices; and the judges of assize, or any superior court, to which the indictment shall be removed, shall proceed thereon accordingly. See *Coombes's* case, 1 *Leach. C. C.* 388. Vol. I. *tit.* Admiralty Court, p. 30, 31. *Grosvenor* v. *St. Augustine's Lath*, 12 *East.* 244. Vol. II. *tit.* Excise, &c. p. 37.

Where the stroke is in *England*, and the death out of *England*; and *vice versa*.

Stat. 57 *G.* 3. *c.* 53. "*for the more effectual punishment of murders committed in places not within his majesty's dominions,*" after reciting, that whereas grievous murders and manslaughters have been committed at the settlement in the bay of *Honduras* in *South America*, the same being a settlement, for certain purposes, in the possession and under the protection of H. M., but not within the territory and dominions of H. M., by persons residing and being within the said settlement; and the like offences have also been committed in the *South Pacific* ocean, as well on the high seas as on land, in the islands of *New Zealand* and *Otaheite*, and in other islands, countries, and places not within H. M.'s dominions, by the masters and crews of *British* ships, and other persons who have for the most part deserted from or left their ships, and have continued to live and reside amongst the inhabitants of those islands; whereby great violence has been done, and a general scandal and prejudice raised against the name and character of *British* and other *European* traders: And whereas such crimes and offences do escape unpunished, by reason of the difficulty of bringing to trial the persons guilty thereof: for remedy thereof, enacts, that all murders and manslaughters committed on land at the said settlement in the bay of *Honduras* by any person residing or being within the said settlement, and all murders and manslaughters committed in the said islands of *New Zealand* and *Otaheite*, or within any other islands, countries, or places not within H. M.'s dominions, nor subject to any *European* state or power, nor within the territory of the United States of *America*, by the master or crew of any *British* ship or vessel, or any of them, or by any person sailing in or belonging thereto, or that shall have sailed in or belonged to and have quitted any *British* ship or vessel to live in any of the said islands, countries, or places, or either of them, or that shall be there living, shall be tried, adjudged, and punished in any of H. M.'s islands, plantations, colonies, dominions, forts, or factories under the king's commission or commissions, which

Trial. 57 G. 3. c. 53.

Murders and manslaughters committed in certain foreign parts may be tried in any of H. M.'s foreign plantations, in same manner as offences committed on the high seas.

57 G.3. c.53. shall have been or which shall hereafter be issued in pursuance of the powers of stat. 46 *G.* 3. *c.* 54. in the same manner as if such offence had been committed on the high seas.

§ 2. Provides, that nothing herein contained shall repeal or affect the provisions of stat. 33 *H.* 8. *c.* 23.

59 G.3. c.44. Certain offences committed on land in the bay of Honduras, to be tried under a commission under the great seal.

And by stat. 59 *G.* 3. *c.* 44. § 1. It is enacted, that all murders, manslaughters, rapes, robberies, and burglaries committed, or that shall be committed on land, at the said settlement in the bay of *Honduras*, may be inquired of, tried, heard, determined, and adjudged, within the said settlement in the bay of *Honduras*, under or by virtue of the king's commission or commissions, under the great seal of *G. B.*, to be directed to any such four or more discreet persons, as the lord chancellor of *G. B.*, lord keeper, or commissioners for the custody of the great seal of *G. B.*, for the time being, shall from time to time think fit to appoint, in the same manner as is provided and enacted with respect to any crimes directed to be inquired of, heard, determined, or adjudged, under and by virtue of any commission issued under and by virtue of the aforesaid act of the 46 *G.* 3. in any of H. M.'s islands, plantations, colonies, dominions, forts or factories.

§ 2. Enacts, that the commissioners so to be appointed, or any three of them, shall have such and the like powers and authorities for the trial of all such murders, manslaughters, rapes, robberies, and burglaries, committed within such settlement in the bay of *Honduras*, as any commissioners appointed or to be appointed under the said act of the 46 *G.* 3. have, or would have, for the trial of any offences committed upon the seas; and all persons convicted of either of the said offences so to be tried by virtue of any commission to be issued according to the directions of this act shall be subject and liable to, and shall suffer all such and the same pains, penalties, or forfeitures, as by any law or laws now in force persons convicted of the same respectively would be subject and liable to in case the same were respectively inquired of, tried, heard, determined, and adjudged, within any of H. M.'s islands, plantations, colonies, or dominions, by virtue of any commission made according to the directions of stats. 46 *G.* 3. *c.* 54. and 57 *G.* 3. *c.* 53.

§ 3. Nothing herein contained shall repeal or affect the provisions of stat. 33 *H.* 8. *c.* 23.

1 G.4. c.90. Persons tried for capital crime committed at sea, shall receive the benefit of clergy, as if committed on land.

Stat. 1 *G.* 4. *c.* 90. § 1. Enacts, that when any person or persons shall be tried for any capital crime or offence committed upon the sea, out of the body of any county of this realm, and within the jurisdiction of the admiralty, by virtue of any commission directed under stat. 28 *H.* 8. *c.* 15., and shall be found guilty of any crime or offence which, if committed in or upon the land, would be clergyable, such person or persons shall be entitled to receive the benefit of clergy in respect of such crime or offence, in like manner, and shall be subject to the same punishment for such clergyable crime or offence, as if he, she, or they had committed such clergyable crime or offence in or upon the land.

25 G.2. c.37. Judgment.

By stat. 25 *G.* 2. *c.* 37. § 3. Sentence in case of murder shall be pronounced in open court immediately after conviction, unless the court shall see reasonable cause for postponing the same; in which shall be expressed not only the usual judgment of death, but also

the time appointed for execution, and the marks of infamy hereby directed for such offenders. 25 G.2. c.37.

How to be demeaned after judgment.

§ 6, 7. And after conviction and judgment the gaoler shall confine the prisoner to some cell, or other proper and safe place in the prison, apart from the other prisoners; and no person, except the gaoler or his servants, shall have access to him without a licence under the hand of the judge, sheriff, or under-sheriff. But if the judge shall see cause to respite the execution, he may during the time of such stay of execution, relax or release by licence under his hand any or all of the restraints or regulations before directed to be observed by the gaoler.

§ 8. After sentence, and until execution, the offender shall be fed with bread and water only (except in case of receiving the sacrament, or of any violent sickness or wound, in which case some known physician, surgeon, or apothecary may be admitted by the gaoler to administer necessaries, his name and place of abode being first entered in the books of such prison). And if the gaoler shall offend against or neglect to put in execution any of the said directions, he shall forfeit his office, and be fined 20*l.* and imprisoned till paid.

Execution.

§ 1. The execution of persons found guilty of wilful murder shall be on the day next but one after sentence passed, unless it be *Sunday*, and in that case on the *Monday* following.

Respite.

§ 4. But if there shall appear reasonable cause, the judge after sentence pronounced may stay the execution at his discretion.

Rescue.

§ 9. And if any person shall by force set at liberty or rescue, or attempt to set at liberty or rescue any person out of prison committed for or found guilty of murder, or rescue or attempt to rescue any such person going to or during execution, he shall be guilty of felony without benefit of clergy.

Dissection.

§ 2. The body, if in *London* or *Middlesex*, shall be immediately conveyed by the sheriff to the surgeon's hall, or such other place as the surgeons' company shall appoint, to be by them dissected and anatomized; and if elsewhere, shall be delivered to such surgeon as the judge shall direct, for the purpose aforesaid.

Body not to be buried.

§ 5. And the judge may direct the body to be hung in chains, or anatomized; but in no case whatsoever to be buried, unless after the same shall have been dissected and anatomized.

Form of sentence.

At a meeting of the judges in *June* 1752 to consider of this law in the case of *Swan* and *Jefferys*, 1 *East's P. C.* 373., they agreed that this should be the sentence or judgment: — "*That you be taken from hence to the prison from whence you came, and that you be taken from thence on the* ——— *day of* ——— *instant* (or *next*) *to the place of execution, and that you be there hanged by the neck till your body be dead; and that your body when dead be taken down, and be dissected and anatomized.*" They also resolved that the judgment for dissecting and anatomizing, and touching the time of execution, ought to be pronounced in cases of petit treason, though murder only is mentioned, and in that case too the time of execution to be a part of the judgment. There was some doubt whether hanging in chains might ever be made part of the sentence; but on debate it was agreed by nine judges, that in all cases within the act the judgment for dissection and anatomizing only should be part of the sentence; and if it should be thought

advisable, the judge might afterwards direct the hanging in chains by special order to the sheriff, pursuant to the power given by this clause. *Fost.* 107.

Wyatt's case.

William Wyatt was convicted before *Chambre* J. at *Cornwall Lent Assizes* 1812, upon an indictment for *murder*. The day of the week on which the trial took place was *Thursday*, but by mistake it was supposed to be *Friday*, and in passing sentence the execution was directed to be on the following *Monday* instead of *Saturday*. Immediately after sentence, the Court was adjourned till the next morning, *without the intervention of any other business*, and the error being discovered soon after the adjournment, the prisoner was directed to be brought up at the sitting of the court in the morning, which was accordingly done, and the sentence was given, before any other business was entered upon, to be executed on the *Saturday*. An order was then made pursuant to the authority given by the 4th and 7th sections of stat. 25 *G*. 2. *c*.37. to stay the execution and relax the restraints imposed by the act, in order to take the opinion of the judges upon the following questions;

1st. Whether the statute, so far as it requires the *time* of the execution to be expressed in pronouncing the sentence, is not to be considered as *directory* only, without invalidating the judgment when omitted, or preventing the entry of the proper judgment on record specifying the time of the execution?

2nd. Whether, supposing the specification of time to be a necessary act in pronouncing sentence, the error was not legally corrected by what was done in open court the next morning, the court not having proceeded to any other business whatever in the intermediate time?

The Judges, on conference, held that the stat. 25 *G*. 2. *c*. 37. is *directory only* so far as it requires the time of the execution to be expressed in pronouncing the sentence, and therefore the error in this case was rightly and legally corrected by the proceedings on the following morning, no other business having intervened between the conviction and pronouncing sentence. The prisoner was accordingly executed. *MS. C. C. R.*

Rescuing the body.

And by stat. 25 *G*. 2. *c*. 37. § 10. If after execution any person shall by force rescue or attempt to rescue the body; he shall be guilty of felony, and transported for seven years.

How far the accessary shall have his clergy.

The principal in murder is ousted of clergy in all cases, and the accessary before is also ousted of clergy in all cases, but the accessary after is in no case ousted of clergy. 2 *Hale*, 344.

By stat. 22 *G*. 2. *c*. 33. *art*. 28. All murders committed by any person in the fleet shall be punished with death, by the sentence of a court-martial.

§ VI. Self-Murder.

Felo de se.

A *felo de se*, or felon of himself, is a person who, being of sound mind, and of the age of discretion, voluntarily killeth himself. 3 *Inst.* 54. 1 *Hale*, 411.

Year and day.

If a man give himself a wound, intending to be *felo de se*, and dieth not within a year and day after the wound, he is not *felo de se*. 3 *Inst.* 54.

Non compos.

Mr. *Hawkins* speaks with some warmth against an unaccountable notion (as he calls it) which hath prevailed of late, that every one

who kills himself must be *non compos* of course; because it is said to be impossible that a man in his senses should do a thing so contrary to nature and all sense and reason. But he argues, that if this doctrine were allowable, it might be applied in excuse of many other crimes as well as this; as, for instance, that of a mother murdering her child, which is also against nature and reason; and this consideration, instead of being the highest aggravation of a crime, would make it no crime at all; for it is certain a person *non compos mentis* can be guilty of no crime. 1 *Haw. c.* 27. § 3.

And Ld. *Hale* says, it is not every melancholy or hypochondriacal distemper that denominates a man *non compos*, for there are few who commit this offence but are under such infirmities; but it must be such an alienation of mind, as renders a person to be a madman, or frantic, or destitute of the use of reason, which will denominate him *non compos.* 1 *Hale*, 412.

The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land without an attainder by course of law. 3 *Inst.* 54. **Forfeiture.**

Nor shall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot be viewed, the justices in sessions may inquire thereof; for they have power by their commission to inquire of all felonies; and a presentment thereof found before them entitles the king to the forfeiture. 3 *Inst.* 54, 55. *Dalt. c.* 144.

But nevertheless, the forfeiture shall relate to the time of the wound given, and not to the time of the death, or of the inquisition. 3 *Inst.* 55. *Dalt. c.* 144. 1 *Hale's Sum.* 29. 1 *Haw. c.* 27. § 10.

But Ld. *Hale*, in his History of the Pleas of the Crown, seemeth to doubt whether it shall not relate to the time of the death only, and not the time of the wound given. 1 *Hale*, 414.

Nor doth the offence work any corruption of blood or loss of dower. 1 *Haw. c.* 27. § 8. **Corruption of blood.**

By the rubrick in the book of common prayer, before the burial office, (confirmed by act of parliament, 13 & 14 *C.* 2. *c.* 4.) a person who hath laid violent hands upon himself shall not have that office used at his interment. **Burial.**

He shall be buried ignominiously in the highway, with a stake driven through his body. 4 *Blac. Com.* 190.

But by stat. 4 *G.* 4. *c.* 52. After reciting that whereas it is expedient that the laws and usages relating to the interment of the remains of persons, against whom a finding of *felo de se* shall be had, should be altered and amended: It is enacted, that from and after the passing of this act (8th *July*, 1823) it shall not be lawful for any coroner, or other officer having authority to hold inquests, to issue any warrant or other process directing the interment of the remains of persons, against whom a finding of *felo de se* shall be had, in any public highway; but that such coroner or other officer shall give directions for the private interment of the remains of such person *felo de se*, without any stake being driven through the body of such person, in the churchyard or other burial ground of the parish or place in which the remains of such person might by the laws or custom of *England* be interred if the verdict of *felo de se* had not been found against such person; such interment to be **4 G. 4. c. 52. Remains of persons against whom a finding of *felo de se* is had, to be privately buried in the parish churchyard.**

4 G.4. c.52. made within 24 hours from the finding of the inquisition, and to take place between the hours of 9 and 12 at night.

Rites of christian burial not to be performed; and former laws and usages not to be altered.

§ 2. Provided, that nothing herein contained shall authorise the performing of any of the rites of christian burial on the interment of the remains of any such person as aforesaid; nor shall any thing hereinbefore contained be taken to alter the laws or usages relating to the burial of such persons, except so far as relates to the interment of such remains in such churchyard or burial ground, at such time and in such manner as aforesaid.

Hops. See Excise.

Horses.

For the duties on horses travelling post, see title Post, Vol. III.

§ I. Stealing Horses.

1 Ed.6. c.12. (A)

BY stat. 1 *Ed.* 6. *c.* 12. § 10. It is enacted, "that no person or persons who shall be convicted of feloniously stealing (A) any horses, geldings, or mares; or being indicted or appealed thereof, and thereupon found guilty by verdict, or shall confess the same on arraignment, or will not answer directly, or shall stand mute, shall have the benefit of clergy." Therefore if the jury were to find the value to be 12*d.* or under, it would not be capital, because the party in that case would have no occasion to pray clergy. This statute however mentioning those animals in the plural number only, a doubt arose whether it extended to the case of stealing a single horse, &c.; to remove which, stat. 2 & 3 *Ed.* 6. *c.* 33. declares and enacts, "that all persons feloniously taking or stealing any horse, gelding, or mare, shall be put from their clergy in like manner and form as though they had been indicted or appealed for felonious stealing two horses, two geldings, or two mares of any other, and thereupon found guilty by verdict, or confess the same on their arraignment, or stand wilfully mute." 1 *Hale,* 531. 2 *Hale,* 365. 2 *East's P.C.* 614.

Uriah Pearles was indicted for stealing a bay gelding of the value of 23*s.* 6*d.* On the evidence it appeared to be a worthless

animal, turned upon a common, and as the witnesses said, fit only for a dog-horse. Mr. *Justice Foster* recommended it to the jury to find the prisoner guilty to the value of 12*d.*; which they did; and he was transported. *Pearles's case, Bedford,* 13*th March* 1755, 2 *East's P. C.* 741. (*a*)

If horses be stolen out of the stable or other curtilage of the dwelling-house in the night time, it falls under the denomination of *Burglary* (B); if in the day time, it falls under the denomination of *Larceny from the house:* See the respective titles of Burglary, Vol. 1. and Larceny, Vol. III. (B)

By stat. 10 & 11 *W.* 3. *c.* 23. whoever shall apprehend and prosecute to conviction any horse-stealer, shall have a certificate, signed by the judge, to exempt him from serving all parish and ward offices. *Vide* Vol. II. p. 399. **10 & 11 W. 3. c. 23. Certificate to exempt from parish offices.**

Mr. *Dickenson* mentions the following extraordinary attempt to convert an open and *forcible* taking of a horse, into a *felonious* taking, in a case which occurred at the *Essex* Summer Assizes, 1817. *Israel Alexander* and *Thomas Davis* were tried before Lord *Ellenborough*, C. J. for horse-stealing. The facts were these: —One *Carter*, a servant to the proprietors of the *Cannon Brewery*, rode on a horse borrowed by his employers as far as *Stratford*, in the road to *Woodford*, on business of the said proprietors. When he arrived opposite the *King's Head Inn*, at *Stratford*, the horse turned restive, and would go no further. *Carter* got off to lead him into the inn-yard, intending to pursue the short remainder of his journey on foot, when the two prisoners opened the sash of a window in the inn, and called out, "*What will you take for the restive horse?*" *Carter* answered, *He is not worth more than 5l.* This, on the trial of the prisoners, he declared he only said in a passion, meaning to apply it to the restiveness of the animal, for he added "that the horse was a borrowed one, and not his to dispose of," and that in fact it was worth at least 20*l.* He led it into the stable, and went himself into the house.—*Alexander* went into the yard, soon after returned, said he would have the horse, and tendered a note of 20*l.* or 25*l.* value to *Carter*, and asked him to return the difference: *Carter* in reply repeated, "*that it was a borrowed horse, and that he had no authority to sell it, and what he had said about the value of him was merely a joke.*" *Alexander* repeatedly tendered the money, and afterwards took the horse away with him by force, went to another inn, and locked him up in the stable there. This all passed at mid-day in the open yard of the inn, in the presence of several persons. *Carter* pursued his journey on foot, and on his return demanded his horse, but could not obtain him. The jury were disposed to find the prisoner **Dickenson's Justice, vol. 2. p. 138.**

(*a*) The following points respecting the property, under particular circumstances, in an old and worn out horse, arose in a case before the editor a few years ago. *A.* ordered his servant to destroy an old and favourite horse, and bury it. The servant directed one of *A.*'s labourers to execute the order; who, instead of doing so, took the horse to a neighbouring town and sold it to a tanner for fifteen shillings. Upon these facts application was made to the editor, as a magistrate, to commit the labourer for horse stealing; but entertaining doubts upon the subject, he took an opportunity of mentioning the case to one of the judges, then on the circuit, who was of opinion that *A.* had so disclaimed all property in the horse that it could not be the subject of larceny. See 2 *Russ.* 1179. also 1042.

guilty of a fraud, but Ld. *Ellenborough*, C. J. said, "The prisoners are indicted for horse-stealing, and they must either be found guilty of that specific offence, or wholly acquitted. Under the circumstances of the case there is no pretence to say that this public and open taking of the horse was a stealing, which supposes something of privacy and secrecy. It is very material to justice not to confound cause of action with felony; claim of civil redress with public crime. Even if they had been indicted for a fraud, I do not think the circumstances of the case would have supported the indictment; but there is no pretence to say that this wanton, and even forcible taking of the horse, can come under the denomination of horse stealing."

§ II. Buying Stolen Horses.

2 & 3 P. & M. c. 7. 31 El. c. 12. By stats. 2 & 3 *P. & M. c.* 7. and 31 *El. c.* 12. it is enacted as follows;

Horse fair. The keeper of every fair and market shall yearly appoint a certain special and open place, where horses shall be sold in any fair or market overt;

Toll-taker. And shall appoint one or more persons to take toll there, and to keep the same place from ten in the forenoon till sunset;

Horse to be shewed one hour. And the sale or exchange in any fair or market overt of any stolen horse shall not alter the property, unless the same shall be in the time of the said fair or market openly ridden, led, walked, driven, or kept standing for one hour together at least, between ten of the clock at sun-set, in the open place of the fair or market, wherein horses are commonly used to be sold, and not within any house, yard, backside, or other secret place;

Seller and buyer to go to the toll-taker. Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll-taker, or for the book-keeper where no toll is due;

Sale to be entered. Nor unless such toll-taker there, or (where no toll is paid) the book-keeper or chief officer of the fair or market, shall take upon him perfect knowledge of the seller, and of his true christian name and surname, and place of abode, and shall enter all the same his knowledge in a book to be kept for that purpose, or else that the seller shall bring to the toll-taker, or other officer aforesaid, one credible person, that shall testify that he knoweth the seller, and his true name, surname, mystery, and dwelling place, and there enter the same, and also the name, surname, mystery, and dwelling place of him that so avoucheth his knowledge;

And the price. Nor unless he also cause to be entered the very true price;

And marks. And also the colour, and one special mark at least;

Toll to be paid. And also the buyer to pay the toll, if any is due; if not, then to give 1*d.* for the entry.

Certificate of entry. Which done, the person entering the same shall give to the buyer requiring and paying 2*d.* for the same, a note in writing of all the contents of such entry subscribed with his hand.

Penalties. Every person offending in any of the premises shall forfeit 5*l.*, half to the king, and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the sale shall be void; and the owner may seize and take his horse again, or have an action of detinue or replevin for the same.

And if any horse shall be stolen, and after shall be sold in open fair or market, and the sale shall be used in all points as aforesaid, yet nevertheless such sale in six months after the felony done shall not take away the owner's property, so as claim be made in six months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so as proof be made before such magistrate in 40 days next ensuing by two witnesses, that the property of such horse was in the party claiming, and was stolen from him within six months next before such claim; but the party from whom the same was stolen may at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer, to the party who hath possession, so much as he shall swear before such magistrate that he paid for the same.

2 & 3 P. & M. c.7. 31 El. c.12. Owner may claim his horse within six months, and afterwards by paying what he cost.

§ III. Killing or maiming Horses.

[See Vol. I. § III. *tit.* Cattle.]

§ IV. Regulations for slaughtering Horses.

By stat. 26 G.3. *c.* 71. § 1. Every person who shall keep or use any house or place for the purpose of slaughtering any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, *which shall not be killed for butcher's meat*, shall take out a licence at the quarter sessions, which shall be signed by the justices at such sessions, upon a certificate under the hands and seals of the minister and church-wardens or overseers, or of such minister and two substantial householders of the parish wherein such person shall dwell, that he is fit and proper to be trusted with the carrying on such business: and if such licensed person shall die, his widow or personal representative may carry on the said business until the next sessions.

26 G.3. c.71. Licence to be taken at the sessions.

§ 2. The licence shall be signed by the major part of the justices, and a copy of the licence shall be entered in a book to be kept by the clerk of the peace for that purpose; which book any person may inspect, and make extracts therefrom, between the hours of ten and twelve in the forenoon (*Sundays* excepted), paying for the same 6*d*.

Book to be kept.

Every person so licensed shall cause his *name* and the words *Licensed for slaughtering horses pursuant to an act passed in the 26th year of his majesty king* George *the third*, to be painted or fixed over the door or gate of the house or place where he shall carry on the said business, in large and legible characters.

Certain words to be put up.

§ 5. And such parishioners as by law are entitled to meet in vestry to choose parish officers shall annually or oftener appoint one or more persons to inspect every such slaughtering house; and the inspector shall cause his *name*, and the words *Inspector of houses and places for slaughtering horses*, to be put up over his door where he resides.

Inspectors to be appointed, and their names put up.

§ 3. 5. Every such licensed person shall give six hours' notice in writing to such inspector, previous to his killing any such horse, &c. or other cattle, and previous to the flaying any such brought

Inspector's duty.

26 G.3. c.71. dead to such slaughtering house, to the intent that the inspector may attend and take an account and description of the height, age, colour, and marks of every such horse, mare, gelding, foal or filly, ass or mule, and the colour and marks of every cow, &c. brought alive to be killed, or brought dead as aforesaid; and the same shall not be killed or flayed but between the hours of eight in the morning and four in the evening, between the last day of *September* and the first day of *April*, and six in the morning and eight in the evening between the last day of *March* and the first day of *October* yearly. The inspector shall keep a book, and enter such description therein, and every person carrying on such business shall pay 6*d*. for every entry; and all persons may have access to such book between the hours of eight in the morning and five in the evening from the 1st day of *October* to the last day of *March*, and between six in the morning and eight in the evening during the other six months, paying 6*d*. for every inspection. If the inspector shall have reason to believe that any horse, &c. is free from disease, and in a sound and serviceable state, or hath been stolen, or unlawfully come by, he may prohibit the slaughtering thereof, for any time not exceeding eight days, and in the mean time shall advertise the same twice or more in some newspaper circulated in the county where such slaughterhouse is situate, unless the owner shall sooner claim the same, or certify to the inspector that he sent the same to be slaughtered; the expence of advertising to be paid by the occupier of such slaughterhouse; and if he shall (C) refuse to pay the same, and shall be convicted (C) thereof on the oath of the inspector before one justice, he shall forfeit double the amount thereof, to be levied by distress and sale.

§ 12. Every such book kept by the inspector shall be produced at every quarter sessions, and delivered to the justices there assembled, to be by them examined.

Inspectors may search slaughter-houses, &c.

§ 6. Every inspector may, by day or night, (but if in the night, in the presence of a constable) inspect any house or place kept for such purpose by any such licensed person, and also any stable, building, shed, yard, or place belonging thereto, and may search if any horse, &c. is deposited there, and shall take an account thereof.

Persons bringing cattle, refusing to give an account of themselves, may be carried before a justice.

§ 7. And if any person who shall bring or offer to sale, or shall bring any horse, &c. or other cattle as aforesaid, to any such licensed person to be slaughtered or killed, and shall refuse to give a satisfactory account of himself, or of the means by which the same came into his possession; or if there shall be reason to suspect that the same hath been stolen or unlawfully obtained; the said person to whom the same shall be brought or offered to sale, and also the said inspector, may seize and detain such person and horse, &c., and deliver such person to a constable, or peace officer, who shall convey him before a justice; and if the justice shall upon examination have cause to suspect that such horse, &c. hath been stolen or unlawfully obtained, he may commit such person into safe custody for any time not exceeding six days, in order to be further examined; and if the justice shall have reason to believe that such horse, &c. hath been stolen or illegally obtained, he shall commit such person to the common gaol or house of correction where the offence was committed, to be dealt with according to law.

§ 4. Every such licensed person shall make entry in a book to be kept for that purpose of the name, profession, and place of abode of the owner of every horse, &c. brought to be killed or flayed, and also of the person who shall bring the same, and the reason why brought; which book shall at all times be open for the perusal of the inspector; and such person shall attend with and produce the said book before any justice for the place where such slaughterhouse is situate, when required by an order or warrant, and shall likewise produce the same at every quarter sessions.

26 G.3. c.71.

An account to be kept of persons bringing cattle to be slaughtered.

§ 10. If any such licensed person shall make any false entry in such book, and shall be convicted (D) thereof on the oath of two witnesses before one justice, he shall forfeit not exceeding 20*l.* nor less than 10*l.* by distress and sale, (rendering the surplus), half to the informer, and half to the poor of the parish where such offender shall reside; and in case he shall not have effects to the amount of the penalty, such justice shall, after sale and application as aforesaid of such effects as shall be found, commit him to the house of correction, there to be confined to hard labour for any time not exceeding three months, nor less than one month.

Making false entries. (D)

Every person keeping or using any slaughterhouse, who shall kill or flay any horse, &c. for any other purpose than for butcher's meat, or shall flay any horse, &c. brought dead, without taking out such licence as aforesaid, or without giving notice, or shall kill or flay at any time other than within the hours, or shall not delay killing according to the directions of the inspector as before directed, shall be guilty of felony, and shall be punished by fine and imprisonment and such corporal punishment by public or private whipping, or shall be transported for seven years, as the court convicting shall direct.

Slaughtering horses, &c. without a licence, &c. felony.

§ 13. If any unlicensed person shall occasionally lend any house, barn, stable, or other place for the purpose of slaughtering any horse, &c. which shall not be slaughtered for butcher's meat, and shall be thereof convicted (E) before one justice where such person shall reside, upon the oaths of two witnesses; he shall forfeit for every offence any sum not exceeding 20*l.* nor less than 10*l.*, half to the informer, and half to the poor of the parish where the offence shall be committed; and if such penalty be not forthwith paid, such justice shall commit the offender to the common gaol or house of correction, without bail, for any time not exceeding three calendar months, nor less than one calendar month, unless the penalty shall be sooner paid.

Lending slaughterhouses. (E)

§ 9. And if any licensed person shall throw into any lime pit, or immerse in lime, or any preparation thereof, or rub therewith, or with any other corrosive matter, or destroy or bury the hide or skin of any horse, &c. by him slaughtered or flayed; or shall be guilty of any offence against this act for which no penalty or punishment is provided, such person being convicted thereof, shall be deemed guilty of a *misdemeanor*, and shall be punished by fine and imprisonment, and such corporal punishment by public or private whipping, as the court convicting shall think proper.

Destroying or burying hides.

§ 14. Provided, that nothing herein shall extend to any currier, felt-maker, tanner, or dealer in hides, who shall kill any aged or distempered horse, &c. or purchase any dead one for the *bonâ fide*

Persons excepted.

26 G. 3. c. 71. purpose of selling, using, or curing the hide thereof in the course of their respective trades; nor to any farrier employed to kill aged and distempered cattle; nor to any person who shall kill any of their own or other cattle, or purchase any that are dead, to feed their own hounds or dogs; or to give away the flesh thereof for the like purpose.

Persons not excepted. § 15. But every collar maker, currier, felt maker, tanner, or dealer in hides, farrier, or other person who shall, under colour of their respective trades, knowingly or willingly kill any sound or useful horse, gelding, mare, foal, or filly, or boil or otherwise cure the flesh thereof, for the purpose of selling the same, shall forfeit not exceeding 20*l.*, nor less than 10*l.*

Witnesses. § 16. Witnesses wilfully refusing or neglecting to appear, having been duly summoned, or refusing to give evidence, shall forfeit 10*l.*; and in default of payment thereof shall stand committed to the common gaol or house of correction, for any time not exceeding three calendar months, nor less than one calendar month, unless such penalty is sooner paid.

Inhabitants may be witnesses. § 17. Inhabitants of any parish shall be deemed competent witnesses, notwithstanding their paying to the rates, or being poor persons relieved or relievable by the parish, and entitled as such to receive benefit from the penalties.

§ V. Putting stoned Horses on Commons.

32 H. 8. c. 13. By stat. 32 *H.* 8. *c.* 13. § 2. 10. No person shall put in any forest, chase, moor, heath, common, or waste where mares or fillies are used to be kept, any stoned horse above the age of two years, not being 15 hands high, within the shires and territories of *Norfolk*, *Suffolk*, *Cambridge*, *Buckingham*, *Huntingdon*, *Essex*, *Kent*, *South Hampshire*, *North Wiltshire*, *Oxford*, *Berkshire*, *Worcester*, *Gloucester*, *Somerset*, *North Wales*, *South Wales*, *Bedford*, *Warwick*, *Northampton*, *Yorkshire*, *Cheshire*, *Staffordshire*, *Lancashire*, *Salop*, *Leicester*, *Hereford* and *Lincoln*; nor under 14 hands in
21 J. c. 28. any other county (except *Cornwall*, stat. 21 *J.* *c.* 28. § 12.), on pain of forfeiting the same.

18 El. c. 8. But by stat. 18 *El.* *c.* 8. § 3. This shall not extend to the *marshes* in the counties of *Cambridge*, *Huntingdon*, *Suffolk*, *Northampton*, *Lincoln*, and *Norfolk*; provided that the horses be of 13 hands.

Stoned horses breaking out of an inclosure. Also by stat. 32 *H* 8. *c.* 13. § 5. Nothing herein shall extend to any stoned horse, that shall happen once in a year to break out of any pasture into such common, so that he do not stay there above four days after notice given at the dwelling-house of the owner, or after publication thereof on a *Sunday* or other festival in the parish church where the owner or possessor of such horse dwelleth.

Seizing horses under size. § 3. Any person may seize any such horse so being under size in manner following; he shall go to the keeper of such forest, or (out of such forest) to the constable of the next town, and require him to go with him, to bring such horse to the next pound, and there to be measured by such officer, in the presence of three other honest men to be appointed by the officer; and if he shall be found contrary to what is above expressed, such person may take him for his own use.

§ 4. And if such keeper, or constable, or other of the three persons, shall refuse to do as is aforesaid, he shall forfeit 40*s.*

§ 6. All such commons and other places shall, within 15 days after *Michaelmas* yearly, be driven by the owners and keepers, or constables, respectively, on pain of 40*s*., and they may also drive the same at any other time when they shall think meet. 32 H. 8. c. 13. Driving the common.

§ 7. If in any of the said drifts there shall be found any mare, filly, foal, or gelding, that shall then be thought not able nor like to grow to be able to bear foals of reasonable stature, or to do profitable labours, by the discretion of the drivers, or of the more number of them; they may kill and bury them. Defective mares, &c.

All which said forfeitures shall be half to the king, and half to him that shall sue; and the justices in sessions, and stewards of leets, may inquire thereof; and the stewards shall certify his presentments to the next sessions. Penalties.

§ VI. Putting scabbed Horses on Commons.

By stat. 32 *H*. 8. *c*. 13. § 9. No person shall have, or put to pasture, any horse, gelding, or mare, infected with scab or mange, in any common, or common fields, on pain of 10*s*., which offence shall be inquirable in the leet, as other common annoyances be, and the forfeitures shall be to the lord of the leet.

A. Warrant to apprehend a Horse-stealer. A.

County of ———, *to wit*. } To the constable of ———.

FORASMUCH as A. I., *of* ———, *in the county of* ———, *yeoman, hath this day made information and complaint upon oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that in the night of yesterday a black mare, the property of him the said* A. I., *was feloniously stolen, taken, and led away from and out of the grounds of him the said* A. I. *at* ——— *aforesaid, and that he hath just cause to suspect and doth suspect that* A. O., *late of* ———, *labourer, did feloniously steal, take, and lead away the said mare: These are therefore to command you forthwith to apprehend him the said* A. O., *and bring him before me to answer to the said information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord* ———.

Or if the offence amount to burglary, then the warrant may be thus:

B. B.

County of ———, *to wit*. } To the constable of ———.

FORASMUCH as A. I., *of* ——— *in the county of* ———, *yeoman, hath this day made information and complaint upon oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that in the night of yesterday the stable of him the said* A. I. *adjoining to the dwelling-house of him the said* A. I., *at* ——— *aforesaid, was feloniously and burglariously broke open, and one black mare, the property of him the said* A. I., *feloniously and burglariously stolen, taken, and led away from thence; and that he hath just cause to suspect and doth suspect that* A. O.,

late of ———, in the county aforesaid, labourer, the said felony and burglary did commit: These are therefore to command you forthwith to apprehend him the said A. O. *and bring him before me to answer to the said information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the ——— day of ———, in the year of our Lord ———.*

Forms of Conviction prescribed by Stat. 26 *G.* 3. *c.* 71.

C.

C.

A. B. *is convicted on the oath of* A. W., *inspector of houses and places for slaughtering horses for the parish of ———, in the county of ———, of refusing to pay the sum of ———, being the expence of an advertisement, or advertisements* [as the case may be] *inserted in the* Daily Advertiser, *or some other public newspaper circulated in the county* [as the case may be], *pursuant to the directions of the statute in that case made and provided. Given under my hand and seal this ——— day of ———.*

F. G.

D.

D.

BE it remembered, that on this ——— day of ———, in the year ———, A. O., *licensed for slaughtering horses, is convicted upon the oaths of* A. W. *and* B. W., *two credible witnesses, before me* J. P., *one of his majesty's justices of the peace for the county of ———, of having wilfully made, or caused to be made* [as the case may be], *a false entry in the book required by the statute in that case made and provided to be kept by the said* A. O., *whereby he* [*she*, or *they*] *has* [or *have*] *forfeited the sum of ———. Given under my hand and seal the day and year above written.*

E.

E.

BE it remembered, that on this ——— day of ——— A. O. *was convicted upon the oaths of two credible witnesses, before me* J. P., *one of his majesty's justices of the peace for the county of ———, for occasionally lending a house* [or *place*, as the case may be] *for the purpose of slaughtering horses* [or, as the case may be, *of slaughtering cattle for other purposes than for butchers' meat,*] *without a licence for that purpose first obtained, according to the statute in that case made and provided. Given under my hand and seal the day and year above written.*

Horse Races.

[13 G. 2. c. 19. — 18 G. 2. c. 34.]

13 G. 2. c. 19. No person to enter a horse unless it be his own property.

BY stat. 13 *G.* 2. *c.* 19. § 1. Whereas the great number of horse races for small plates or prizes have contributed very much to the encouragement of idleness, and impoverishment of many of the meaner sort of people, and the breed of strong and useful horses

hath been much prejudiced thereby, it is enacted, that no person shall enter, start, or run any horse, mare, or gelding, for any prize, unless the same shall be *bonâ fide* his own property; on pain of forfeiting the same, or the value thereof. 13 G. 2. c. 19.

Nor shall any one person enter and start more than one horse, &c. for one and the same prize; on pain that every such horse, &c. (other than that which was first entered) shall be forfeited, or the value thereof. Not to enter more than one horse for the same prize.

By § 7. All sums of money paid for entrance shall go to the second best horse. Entrance money.

By § 2. No plate, prize, sum of money, or other thing, shall be run for, or advertised, or proclaimed to be run for by any horse, &c., unless such plate, &c. be of the real and intrinsic value of 50*l.* or upwards; and if any person shall enter, start, or run any horse, &c. for any such plate, &c. under the value of 50*l.*, or shall make, print, advertise, or publish any advertisement or notice of any such prize under the value of 50*l.*, every such person so entering, starting, or running such horse, &c. shall forfeit 200*l.*, and every maker, printer, or publisher, advertiser, or proclaimer of such advertisement, shall forfeit 100*l.* No prize to be less than 50*l.*

By stat. 18 *G.* 2. *c.* 34. § 11. Any person may run any match, or start and run for any plate, prize, sum of money, or other thing of the real value of 50*l.* or upwards, at any weights and place soever, without incurring the penalties of stat. 13 *G.* 2. *c.* 19. (*viz.* § 3. 5.) relating to weights as afore mentioned. 18 G. 2. c. 34. 50*l.* prize may be run for by any weights at any place.

This section virtually repeals 13 *G.* 2. *c.* 19. § 3. as to *weights*, and *id.* § 5. as to places of running being *Newmarket* and *Black Hambleton* only for prizes of 50*l.* value or upwards. See *Tyrw. & Tyn. D.* of *S.* p. 370. *pl.* 4.

By § 5. And no person shall start or run any match for any sum of money or other thing, unless it be at *Newmarket* or *Black Hambleton*, or such sum or other thing be of the real and intrinsic value of 50*l.* or upwards; on pain of 200*l.* See the doubts, 2 *B & P.* 53, 54, and *Tyrwhitt's* note, Stat. Dig. tit. *Horse Racing*, pl. 5. 4 *Blac. Com.* 173. *n.* 11. *Chr.* No match to be for less than 50*l.*

By § 4. Every race run for any prize, plate, or sum of money, shall be begun and ended in the same day.

In *Johnson* v. *Bann*, 4 *T. R.* 1., it was decided that a wager on the event of a horse race for a smaller sum than 50*l.* is illegal, all such races being expressly prohibited by stat. 13 *G.* 2. *c.* 19. § 2. A wager on a horse race under 50*l.*

In *Bidmead* v. *Gale*, *E.* 9 *G.* 3. 4 *Burr.* 2432. 1 *Blac. Rep.* 671. *S. C.*, it was agreed between plaintiff and defendant, that each should start his mare, and that if either should refuse, he should forfeit 25*l.* to the other, but the plaintiff was to pay the defendant 5*l.* before hand, as a consideration to induce him to make the match. The defendant afterwards refusing to run the match, the plaintiff brought an action against him for 25*l.* *Perrot* B., before whom the cause was tried, considered this as a match for 50*l.*; and on a motion in arrest of judgment, the court of K. B. were of the same opinion. A match for 25*l.* a side, is a match for 50*l.*

§ 6. The aforesaid penalties to be recovered in the courts at *Westminster*, or at the assizes, and be disposed of, half to him that shall sue, and half to the poor of the parish where the offence shall be committed.

Betting, losing, winning, cheating, and the like, at horse races, are within the statutes of gaming, for which see *ante*, tit. Gaming, § II.

For Duty on Horses, &c., see Vol. V. *tit.* Taxes.

House.

See Vol. I. *tit.* Burglary.

How far protected by law.

A MAN's home or habitation is so far protected by the law, that if any person attempt to break open a house in the night time, and is killed in such attempt, the slayer shall be acquitted and discharged. And so tender is the law in respect of the immunity of a man's house, that it will never suffer it to be violated with impunity. Hence in part arises the animadversion of the law upon eaves-droppers, nuisances, and incendiaries; and to this principle it must be assigned, that a man may assemble people together lawfully (at least if they do not exceed eleven) without danger of raising a riot, rout, or unlawful assembly, in order to protect and defend his house; which he is not permitted to do in any other case. 4 *Blac. Com.* 223.

Burglary and felony.

In the case of burglary, which is breaking and entering a dwelling-house in the night time with intent to commit felony, it is a capital offence, although no felony be actually committed, for which see Vol. I. title Burglary. Where the offence falls short of burglary, it is by several particular statutes made felony without benefit of clergy to rob any dwelling-house in the day time, any person being therein; or stealing in the day time to the value of *5s.* in any dwelling-house or outhouse thereunto belonging, although no person be therein; or stealing to the value of *40s.* in any such dwelling-house or outhouse, although the same be not broken open; or breaking a house in the day time, any person being therein and put in fear, although nothing be stolen; or privately stealing any goods to the value of *5s.* in any shop, warehouse, or stable, although it be not broken open nor any person be therein. For all which cases see Vol. III. title Larceny.

Breaking open doors to apprehend offenders.

Concerning the breaking open the doors of an house in order to apprehend offenders, it is to be observed that the law never allows of such extremities but in cases of necessity; and therefore that no one can justify the breaking open another's door to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. 2 *Haw. c.* 14. § 1.

Where the king is party.

But where a person authorised to arrest another who is sheltered in an house, is denied quietly to enter into it, in order to take him, it seems generally to be agreed that he may justify breaking open the doors in any case where the king is party, as upon a warrant from a justice of the peace to find sureties for the peace or good behaviour, or for the levying of a forfeiture upon a penal statute,

which gives the whole or any part of such forfeiture to the king. 2 *Haw. c.* 14. § 2.

In a civil suit, an officer cannot justify breaking open an outward door or window in order to execute process. If he do, he is a trespasser. *Fost.* 319.

Outward doors or windows are such as are intended for the security of the house against persons from without endeavouring to break in. 1 *Hale* 458. 1 *East P. C.* 323. 1 *Russ.* 747. These are protected by the privilege which has been before mentioned; but if the officer find the outward door open, or it be opened to him from within, he may then break open any inward door if he find that necessary to execute his process. *Fost.* 319. Thus it has been held that an officer having entered peaceably at the outer door of a house was justified in breaking open the door of a lodger who occupied the first and second floors in order to arrest such lodger. *Lee* v. *Gansel, Cowp.* 1. But it seems, that if the party against whom the process is issued be not within the house at the time, the officer can only justify breaking open inner doors in order to search for him, after having first demanded admittance. *Ratcliffe* v. *Burton*, 3 *B. & P.* 223. Though in case the person or the goods of the defendant are contained in the house which the officer has entered, he may break open any door within the house without any further demand. *Per Gibbs J. in Hutchinson* v. *Birch, and another.* 4 *Taunt.* 619. If, however, the house is the house of a *stranger* and *not of the defendant*, the officer must be careful to ascertain that the person or the goods (according to the nature of the process) of the defendant are within, before he breaks open any inner door; as if they are not, he will not be justified. *Cooke* v. *Birt*, 5 *Taunt.* 765. *Johnson* v. *Leigh*, 6 *Taunt.* 240.

In a case where an *outward* door was *in part open*, being divided into two parts, the lower latch of which was closed, and the upper part open, and the officer put his arm over the latch to open the part which was closed, upon which a struggle ensued between him and a friend of the prisoner's, and the officer prevailing, the prisoner shot at and killed him, it was held by the judges to be murder. (*a*)

This personal privilege of an individual, in respect to his outward door or window, is confined also to cases where the breach of the house is made in order to arrest *the occupier or any of his* family, who have their domicile, their ordinary residence there: for if a stranger, whose ordinary residence is elsewhere, upon a pursuit take refuge in the house of another, this is not the castle of such stranger, nor can he claim in it the benefit of sanctuary. *Fost.* 320. 5 *Rep.* 93. But it should be observed, that in all cases where the doors of strangers are broken open upon the supposition of the person sought being there, it must be at the peril of finding him there, unless as it seems where the parties act

(*a*) *Baker's case*, 1 *Leach*, 112, 1 *East's P. C.* 323. It should be observed, that in this case there was proof of a previous resolution in the prisoner to resist the officer, whom he afterwards killed in attempting to attach his goods in his dwelling-house, in order to compel an appearance in the county court. The point reserved related to the legality of the attachment.

under the sanction of a magistrate's warrant; 2 *Hale*, 103. *Fost.* 321. 1 *East's P. C.* 324. and an officer cannot even enter the house of a stranger, though the door be open, for the purpose of taking the goods of a defendant, but at his peril whether the goods be found there or not; and if they be not found there, he is a trespasser. *Cooke* v. *Birt*, 5 *Taunt.* 765. *per Dallas* J. And it has been decided that a sheriff cannot justify breaking the inner doors of the house of a stranger *upon suspicion* that a defendant is there, in order to search for such defendant and arrest him on mesne process. *Johnson* v. *Leigh*, 6 *Taunt.* 246. See as to demand of entrance, *post*, p. 1059.

House tax. For duty on houses, see Vol. V. tit. **Taxes.**

House of Correction. See *ante*, tit. **Gaols**, Sect. xv.

Hue and Cry.

§ I. *Its nature.*

II. *Statutes relating thereto.*

[3 Ed. 1. c. 9. — 13 Ed. 1. st. 2. c. 1. — c. 4. — c. 6. — 18 Ed. 2. — 27 El. c. 13. — 7 J. 1. c. 5.)

§ I. Its Nature.

Meaning of words. LORD *Coke* saith, that hue and cry (called in ancient records *hutesium & clamor*) do mean the same thing; for that *huer* in *French* is to hoot or shout, in *English* to cry. 2 *Inst.* 173. 3 *Inst.* 116.

But since it appeareth by the old books (of which also Ld. *Coke* maketh observation, 2 *Inst.* 173.) that hue and cry was anciently both by horn and by voice, it may seem that these two words are not synonymous, but that this *hutesium* or *hooting* is by the *horn*, and *crying by the voice;* which also accordeth with the *French* word *hutchet*, which signifieth a huntsman's horn; so that hue and cry in this sense will properly signify a pursuit by horn and by voice. Which kind of pursuit of robbers by blowing a horn, and by making an outcry, is said to be practised also in *Scotland*. And this blowing of a horn, by way of notice or intelligence, in other cases as well as in the pursuit of felons, seemeth to have been in use of very ancient time; for amongst the laws of *Wihtred* king of *Kent*, in the year 696, this is one: that "if a stranger go out of the road, and neither shout nor blow a horn, he shall be taken for a thief."

Hue and cry, what. Hue and cry is the old common law process after felons, and such as have dangerously wounded any person; and this hath received great countenance and authority by several acts of parliament. 2 *Hale*, 298.

Watches to be kept. By stat. 13 *Ed.* 1. *st.* 2. *c.* 4. To prevent felonies; in walled towns the gates shall be shut from sun-setting to sun-rising; and

none shall lodge without the town from nine of the clock till day, unless his host will answer for him. In other towns, watches shall be kept; and if a watchman arrest a night-walker, and he disobey and fly, the watchman may make hue and cry. 13 Ed. 1. st. 2. c. 4.

Application to the constable.

When any felony is committed, or any person is grievously and dangerously wounded, or any person assaulted and offered to be robbed, either in the day or night, the party grieved, or any other, may resort to the constable of the vill; and, 1. Give him such reasonable assurance thereof, as the nature of the case will bear. 2. If he know the name of him that did it, he must tell the constable the same. 3. If he know it not, but can describe him, he must describe his person, or his habit, or his horse, or such circumstances as he knows, which may conduce to his discovery. 4. If the thing be done in the night, so that he knows none of these circumstances, he must mention the number of the persons, or the way they took. 5. If none of all these can be discovered, as where a robbery or burglary or felony is committed in the night, yet they are to acquaint the constable with the fact, and desire him to search in his town for suspected persons, and to make hue and cry after such as may be probably suspected, as being persons vagrant in the same night; for many circumstances may *ex post facto* be useful for discovering a malefactor, which cannot be at first found. 2 *Hale*, 100, 101. 3 *Inst*. 116.

Justice's warrant.

(A)

For levying hue and cry, although it is a good course to have the warrant (A) of a justice of the peace, when time will permit, in order to prevent causeless hue and cry; yet by the frame of the statutes it is by no means necessary, nor is it always convenient, for the felon may escape before the warrant be obtained, and hue and cry was part of the law before justices of the peace were first instituted. 2 *Hale*, 99.

Constable to raise the town.

The duty of the constable is, to raise the power of the town, as well in the night as in the day, for the prosecution of the offender. 3 *Inst*. 116.

And to search.

And upon hue and cry levied against any person, or where any hue and cry comes to a constable, whether the person be certain or uncertain, the constable may search suspected places within his vill, for the apprehending of the felons. 2 *Hale*, 103.

Breaking doors to search.

But though he may search suspected places or houses, yet his entry must be by the doors being open; for he cannot break open doors barely to search, unless the person against whom the hue and cry is levied be there; and then it is true he may; therefore, in case of such search, the breaking open the door is at his peril, namely, justifiable, if he be there; not justifiable, if he be not there. But it must be always remembered that in case of breaking open a door, there must be first a notice given to them within of his business, and a demand of entrance, and a refusal, before the doors can be broken. 2 *Hale*, 103. 2 *Haw. c.* 14. § 1. *Vide ante*, p. 1056, 1057. and *post*, p. 1060.

Notice to the next constable.

If the person against whom the hue and cry is raised be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found, or till they come to the sea-side. And this was the law before the conquest. 3 *Inst*. 116.

And to the next.

And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall afterwards come, ought

to send to every other town round about him, and not to one next town only. And in such cases it is needful to give notice in writing (to the pursuers) of the things stolen, and of the colour and marks thereof, as also to describe the person of the felon, his apparel, horse, and the like, and which way he is gone, if it may be. *Dalt. c.* 54.

What shall be done where the person cannot be described. But if the hue and cry be upon a robbery, burglary, manslaughter, or other felony committed, but the person that did the fact is neither known nor describable by person, clothes, or the like, yet such hue and cry is good, as hath been said, and must be pursued, though no person certain be named or described. 2 *Hale*, 103.

And therefore in this case all that can be done is, for those that pursue the hue and cry to take such persons as they have probable cause to suspect, as for instance, such persons as are vagrants, or such suspicious persons as come late into their inn or lodgings, and give no reasonable account where they have been, and the like. 2 *Hale*, 103.

3 Ed. 1. c. 9. All persons shall follow the hue and cry. By stat. 3 *Ed.* 1. *c.* 9. All shall be ready, and apparelled, at the commandment and summons of sheriffs (or constables, 2 *Inst.* 171.) and at the cry of the county, to sue and arrest felons; on pain of a grievous fine. And if default be found in the lord of the franchise, the king shall take the franchise to himself; and if in the sheriff or other officer, they shall have one year's imprisonment, and shall make a grievous fine.

13 Ed. 1. st. 2. c. 1. By stat. 13 *Ed.* 1. *st.* 2. *c.* 1. it is likewise enacted that immediately upon robberies and felonies committed, fresh suit shall be made from town to town, and from county to county.

27 El. c. 13. And by stat. 27 *El. c.* 13. § 10. No hue and cry shall be lawful, except it be by horsemen and footmen.

And the life of hue and cry is fresh suit. 3 *Inst.* 117.

Breaking doors to arrest upon pursuit. If the person pursued by hue and cry be in a house, and the doors are shut, and refused to be opened on demand of the constable, and notification of his business, he may break open the doors; and this he may do in any case where he may arrest, though it be only a suspicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the case: And the same law is, upon a dangerous wound given, and a hue and cry levied upon the offender. 2 *Hale*, 102., *ante*, p. 1057, 8, 9.

Killing in the pursuit. And it seems in this case, that if he cannot be otherwise taken he may be killed; and the necessity excuseth the constable. 2 *Hale*, 102.

Arresting an innocent person. If hue and cry be raised against a person certain for felony, though possibly he is innocent, yet the constables and those that follow the hue and cry may arrest and imprison him in the common gaol, or carry him to a justice of the peace, to be examined where he was at the time of the felony committed, and the like. 2 *Hale*, 102.

Arresting a person by description. If the hue and cry be not against a person certain, but by description of his stature, person, clothes, horse, and the like, yet the hue and cry doth justify the constable or other persons following it, in apprehending the person so described, whether innocent or guilty: for that is his warrant; it is a kind of process that the law allows of, not usual in other cases, namely, to arrest a person by description. 2 *Hale*, 103.

In case of hue and cry once raised and levied, on supposal of a felony committed, though in truth there was no felony committed, yet those that pursue hue and cry may arrest and proceed, as if so be a felony had been really committed. Arresting upon hue and cry levied without cause.

And therefore the justification of and imprisonment by a person upon suspicion, and by a person (especially a constable) upon hue and cry levied, do extremely differ; for in the former case, there must be a felony averred to be done, and it is issuable; but in the latter, to wit, upon hue and cry, it need not be averred, but the hue and cry levied upon information of a felony is sufficient, though perchance the information were false.

And the reasons hereof are these 1. Because the constable cannot examine the truth or falsehood of the suggestion of him that first levied it, for he cannot administer to him an oath; and if he should forbear his pursuit of the hue and cry till it be examined by a justice of the peace, the felon might escape, and the pursuit would be lost and fruitless. 2. Because the constable is by the several acts of parliament compellable to pursue hue and cry, and he is punishable, and so are those of the vill, if they do it not. 3. Because he that first raiseth a hue and cry, where no felony is committed, that is, he who giveth the false information, is severely punishable by fine and imprisonment if the information be false.

And therefore if he raise hue and cry upon a person that is innocent, yet they that pursue the hue and cry may justify the imprisonment of that innocent person; and the raiser is punishable: and by the same reason, if he give notice of a felony committed, where there was in truth none.

And here the justification of the imprisonment is mixed, partly upon the hue and cry, and partly upon their own suspicion: and therefore, 1. In respect that it is upon hue and cry, there needs no averment that the felony was done, if the arrest be by that constable that first received the information, and so raised the hue and cry, or if the arrest were made by that constable, or those vills to whom the hue and cry came at the second hand, it must be averred that such a hue and cry came to them, purporting such a felony to be done. 2. But also inasmuch as the hue and cry neither names nor describes the person of the felon, but only the felony committed, and therefore the arrest of this or that particular person is left to the suspicion and discretion of the constable, or of the people of the second or third vill, he that arrests any person upon such general hue and cry must aver that he suspected, and shew a reasonable cause of suspicion.

But now by stat. 7 *J.* 1. *c.* 5. the constable, or any that come to his assistance, even in this case of hue and cry, may plead the general issue, and give the whole matter of the justification in evidence; for the pursuit of hue and cry, though performed by others as well as the constable, is principally the act of the constable of the vill, and the others are but as his deputies or assistants within the precincts of their constablewick. 2 *Hale*, 101, 2, 3, 4. 7 J. 1. c. 5

It seems that they who are taken upon fresh hue and cry are not bailable, as being to be accounted amongst those persons who are under a violent presumption of guilt. 2 *Haw.* *c.* 15. § 41. Persons taken on hue and cry how far bailable.

By stat. 13 *Ed.* 1. *st.* 2. *c.* 6. constables of hundreds shall be chosen who shall present before justices assigned defaults of the High constables to present those

who pursue not hue and cry. suits of towns, and all such as lodge strangers in uplandish towns for whom they will not answer.

Punishment of those who follow not hue and cry. And they which levy not hue and cry, or pursue not upon hue and cry, may be indicted, fined, and imprisoned. 3 *Inst.* 117.

And it is an article of the leet to inquire of hues and cries levied and not pursued. 18 *Ed.* 2.

Costs in actions on the statute. In an action on the statute of hue and cry (27 *El. c.* 13.) for robbery, the plaintiff is entitled to costs. 2 *Saund.* 379. 2 *Wils.* 92. and *per Noel* J. *id.* 93. 1 *T. R.* 70.

§ II. Of the Statutes relating to Hue and Cry.

Several statutes have been from time to time enacted relative to the making of hue and cry.

3 Ed. 1. c. 9. See stats. 3 *Ed.* 1. *c.* 9. and 13 *Ed.* 1. *st.* 2. *c.* 1. *post*, p. 1060.

27 Eliz. c. 13. By stat. 27 *Eliz. c.* 13. entitled, "*An act for the following of hue and cry,*" it is enacted, § 1. that the inhabitants and residents of every hundred, with the franchises within the precinct thereof, wherein negligence, fault, or defect of pursuit and fresh suit after *hue and cry* made shall happen to be, shall answer the one moiety of every sum and damages as shall by force or virtue of stats. 13 *Ed.* 1. *st.* 2. *c.* 1. *c.* 2. and 28 *Ed.* 3. *c.* 11., or either of them, be recovered against the said hundred with the franchises therein, in which any robbery or felony shall at any time hereafter be committed or done; and (by § 2.) the same moiety shall be recovered by action or information in any court of record at *Westminster*, by and in the name of the clerk of the peace of or in every such county within this realm where any such robbery and recovery by the party or parties robbed shall be.

How taxation shall be made. § 5. After execution of damages by the party so robbed had, it shall be lawful (upon complaint made by the party so charged) for two justices of the same county, inhabiting within the said hundred, or near unto the same, where any such executions shall be had, to assess and tax rateably and proportionably according to their discretions all and every the towns, parishes, villages, and hamlets, as well of the said hundred where any such robbery shall be committed, as of the liberties within the said hundred, to and towards an equal contribution to be had and made for the relief of the said inhabitant or inhabitants against whom the party robbed before that time had his or their execution. And after such taxation made, the constables or headboroughs of every such town, &c. shall by virtue of this act have full power within their several limits rateably and proportionably to tax and assess according to their abilities, every inhabitant and dweller in every such town, &c. for and towards the payment of such taxation and assessment, as shall be so made upon every such town, &c. as aforesaid by the said justices. And if any inhabitant of any such town, &c. shall obstinately refuse and deny to pay the said taxation and assessment, so by the said constable, &c, taxed and assessed, then it shall be lawful for the said constables, &c. and every of them, within their several limits and jurisdictions to distrain every person so refusing and denying, by their goods and chattels, and the same distress to sell, and the money thereof coming to retain to the use aforesaid; and if the goods or chattels so distrained and sold shall be of more value than the said taxation shall come unto, then the residue of the said money over and above the said tax-

ation shall be delivered unto the said person or persons so distrained. 27 El. c.13.

§ 6. And every the said constables and headboroughs, after that they have within their several limits and jurisdictions levied and collected their said rates and sums of money so taxed, shall, within ten days after such collection, pay and deliver the same over unto the said justices, or one of them, to the use of the said inhabitant or inhabitants for whom such rate, &c. shall be had or made as aforesaid, which money so paid shall, by the justices or justice so receiving the same, be delivered over (upon request made) unto the said inhabitant or inhabitants to whose use the same was collected.

Constable to pay over in ten days the money collected.

§ 7. And the like taxation, &c. by distress and payment as aforesaid, shall be had and done within every hundred where default or negligence of pursuit and fresh suit shall be, for and to the benefit of every inhabitant of the same hundred where such default shall be, that shall at any time hereafter by virtue of this present act have any damages or money levied of them for or to the payment of the one moiety or half of the money recovered against the said hundred where any robbery shall be hereafter committed.

§ 8. Provided that where any robbery shall be hereafter committed by two or a greater number of malefactors, and that it happens any one of the said offenders be apprehended by pursuit to be made according to the said former mentioned laws and statutes, or according to this present act, in such case no hundred or franchise shall in any wise incur or fall into the penalty, loss, or forfeiture mentioned either in this present act, or in any the said former statutes, although the residue of the said malefactors shall happen to escape and not to be apprehended.

Apprehending one offender shall save the parish from penalty, though the rest escape.

§ 9. Provided that no person hereafter robbed shall take any benefit by virtue of any the said former statutes, to charge any hundred where any such robbery shall be committed, except he shall commence his suit or action within one year next after such robbery.

Limitation of suit against the hundred.

§ 10. And no hue and cry or pursuit hereafter to be done or made by the country or inhabitants of any hundred shall be allowed and taken to be a lawful hue and cry or pursuit upon or after any the said felons or offenders, except the same hue and cry or pursuit be done and made by horsemen and footmen.

By whom a lawful hue and cry may be made.

§ 11. And no person that shall hereafter happen to be robbed shall maintain any action or take any benefit by virtue of the said two mentioned statutes, or either of them, except the same person so robbed shall, with as much convenient speed as may be, give notice and intelligence of the said felony or robbery so committed, unto some of the inhabitants of some town, village, or hamlet near unto the place where any such robbery shall be committed, nor shall bring or have any action upon and by virtue of any the statutes aforesaid, except he or they shall first, within 20 days next before such action to be brought, be examined (C) upon his or their corporal oath, to be taken before some one justice of the peace of the county where the robbery was committed, inhabiting within the said hundred where the robbery was committed, or near unto the same, whether he or they do know the parties that committed the said robbery or any of them; and if, upon such examination, it be confessed that he or they do know the parties that committed

What must be done in order to have an action against the hundred.

(C)

27 El. c. 13. the said robbery, or any of them, that then he or they so confessing shall, before the said action be commenced or brought, enter into sufficient bond by recognizance before the said justice before whom the said examination is had, effectually to prosecute the same person and persons so known to have committed the said robbery, by indictment or otherwise, according to the due course of the laws of this realm.

8 G. 2. c. 16. For the sake of general information, the following correct abridgment of stat. 8 *G.* 2. *c.* 16. for the amendment of the law relating to actions on the statutes of *Hue and Cry*, is here inserted.

How notice shall be given.

§ 1. No person shall have any action against any hundred unless he shall, over and besides the notice already required by stat. 27 *El. c.* 13. to be given of any robbery, with as convenient speed as may be after any robbery on him committed, give notice (B) thereof to one of the constables of the hundred, or to some constable, borsholder, headborough, or tithingman of some town, parish, village, hamlet, or tithing near unto the place wherein such robbery shall happen, or shall leave notice in writing of such robbery at the dwelling-house of such constable, &c. describing in such notice to be given or left as aforesaid, so far as the nature and circumstances of the case will admit, the felon or felons, and the time and place of the robbery, and also shall, within 20 days after the robbery committed, cause public notice (B) to be given thereof in the *London Gazette*, therein likewise describing, as far as the nature and circumstances of the case will admit, the felon or felons, and the time and place of such robbery, together with the goods and effects whereof he was robbed, and shall also, before any such action be commenced, go before the chief clerk or secondary, or the filazer of the county wherein such robbery shall happen, or the clerk of the pleas of that court wherein such action is intended to be brought, or their respective deputies, or before the sheriff of the county wherein the robbery shall happen, and enter into a bond to the high constable or high constables of the hundred in which such robbery shall be committed, in the sum of 100*l.*, with two sufficient sureties to be approved of by such chief clerk, &c. or the sheriff of the said county, with condition for securing to such high constable, &c. (who shall enter an appearance, and also defend such action as hereinafter is mentioned) the due payment of his or their costs after the same shall be taxed by the proper officer, in case that the plaintiff in such action shall happen to be nonsuited or shall discontinue his action, or in case that judgment shall be given against such plaintiff on demurrer, or that a verdict shall be given against him.

Bond to the sheriff.

§ 2. And when any such bond shall be entered into before the said sheriff, such sheriff shall immediately certify the same in writing to the chief clerk or secondary in the court of K. B., or his or their deputy, or to the filazer of that county wherein such robbery shall be committed, or his deputy, in case the action be intended to be brought in the court of C. P., or, if in the court of Exchequer, to the clerk of the peace or his deputy, which certificate shall be delivered by the party robbed to the said chief clerk or secondary, &c. before any process shall issue for the commencement of such suit as aforesaid.

Hundred not chargeable if

§ 3. And no hundred or franchise therein shall be chargeable by virtue of the above-mentioned or any other statute, if one or more

of the felons by whom such robbery shall be committed, be apprehended within 40 days next after such public notice given in the *London Gazette*.

8 G.2. c.16.

felon apprehended in 40 days.

§ 4. No process for appearance in any action to be brought upon the statutes, or either of them, against any hundred, shall be served on any inhabitant thereof, save only upon the high constable or high constables of the hundred, who shall cause public notice thereof to be given in one of the principal market towns within such hundred, on the next market day after he shall be served with such process, or if there shall happen to be no market town within such hundred, then in some parish church within the hundred, immediately after divine service on the *Sunday* next after his being served with such process, and he shall enter an appearance in the said action, and also defend the same for the inhabitants of the said hundred, as he shall be advised, and in case the plaintiff shall recover and obtain judgment therein, then no process of execution shall be served on any particular inhabitant of the said hundred or any franchise within the precinct thereof, nor on the said high constable or high constables, but the sheriff or his officer shall upon the receipt of any writ of execution in pursuance of the said judgment, cause the same to be produced and shewn *gratis* unto two justices residing within the said hundred, or near unto the same, who shall thereupon cause such taxation and assessment to be made, levied, and collected as under stat. 27 *El. c.* 13. in which taxation and assessment there shall be provided for, over and above what the costs and damages recovered by the plaintiff shall amount to (*a*), all such necessary expences which any high constable or high constables shall be at in having defended any such action, claim being made thereto by such high constable or high constables before the said justices, upon due notice being given to him or them by the said justices for that purpose, and the sums of money so to be levied and collected shall be paid over and delivered (by such officer or officers as by the said statute made in the 27th year of the reign of queen *Eliz.* are to levy and collect the same,) within ten days after such collection, to the sheriff of the county wherein the robbery shall happen, to the use of the plaintiff, for so much as the costs and damages by him recovered shall amount to, and to the use of the said high constable, &c. for so much as his expences in defending the said action shall amount to, of which the said high constable, &c. shall give in an account, and make due proof upon oath to the satisfaction of the said justices, before any taxation and assessment shall be made for the reimbursing such high constable, &c. and shall in such expences have no further allowance towards paying an attorney to defend the said action than what such attorney's bill shall be taxed at by the proper officer of that court where such action shall be brought, which the said high constable, &c. shall cause to be taxed for that purpose.

On whom notice shall be served.

Of the taxation.

(*a*) See *per* Noel J. 2 Wils. 93.

§ 6. No sheriff shall be called upon to make any return to any such writ of execution as shall issue or be made out upon any judgment which shall be recovered in an action brought against any hundred by virtue of the above-mentioned statutes, or either of them, until after the expiration of 60 days next after the day whereupon such writ or writs shall be delivered to the said sheriff, who is hereby required to indorse on the back thereof the day on which he received the same.

Sheriff to return writ of execution in 60 days.

8 G. 2. c. 16.

Where the plaintiff is defeated, how costs shall be levied.

§ 7. If any plaintiff in any action to be brought against any hundred upon the statutes above mentioned, or either of them, shall be nonsuited, or shall discontinue his action, or shall have a judgment on demurrer given, or a verdict pass against him, it shall be lawful for any two justices (such as are herein-before mentioned), upon complaint to them made for that purpose, and upon an account given in by such high constable, &c. and proof made upon oath to the satisfaction of the said justices, of such expences necessarily laid out as aforesaid, to make and cause such taxation and assessment to be made, and to be levied and collected in such manner as is directed by stat. 27 *El. c.* 13., in order thereby to reimburse all such charges as he shall have necessarily expended in defending such action; and in case it shall be made appear upon oath to the said justices, that such plaintiff and also his sureties is insolvent, so that the said high constable, &c. can have no relief as to such taxed costs (save only by the power hereinafter given to the said justices), it shall be lawful for such two justices to make and cause a taxation and assessment to be made and to be levied and collected as by stat. 27 *El. c.* 13. in order thereby to reimburse such high constable, &c. such taxed costs as by reason of such insolvency he shall not be able to recover and receive from the plaintiff in the action, or his sureties as aforesaid.

§ 8. And the several sums of money which shall be rated and assessed, and levied and collected as aforesaid, for the reimbursement of the expenses necessarily sustained by any high constable, &c. in defence of any action brought against the hundred upon the statutes above mentioned, or either of them, in case of any judgment given against the plaintiff, shall be paid within 10 days after such collection unto the said justices, or one of them, to the use of such high constable, &c. to whom the said justices shall upon request pay and deliver over the same.

Reward to persons apprehending the felon.

§ 9. Any person or persons who shall apprehend such felon or felons within the time herein-before limited for that purpose, whereby the hundred hath been actually indemnified or discharged from any such action as aforesaid, shall, upon due proof (D) thereof upon oath made before such two justices as aforesaid, be entitled to the reward of 10*l.* (which sum shall be raised upon the hundred by a taxation and assessment,) (E. F.) to be made and to be levied and collected in the same manner as the other sums of money by this present act appointed to be raised upon the hundred are directed to be assessed, levied, and collected; and such sum of 10*l.* shall be paid unto two such justices, within 10 days next after the same shall be so levied and collected to the use of the person who shall be thereunto entitled, as a reward for having so apprehended such felon as aforesaid; and such justices shall, upon reasonable request made for that purpose, pay over and deliver the said sum to such person or persons accordingly, in such shares and proportions as the said justices shall think reasonable; provided always, that such person or persons so entitled to such reward, shall not be thereby rendered incapable to be a witness in any such action.

(D)

(E F)

§ 10. The justices by whom such taxations and assessments as aforesaid shall, in pursuance of stat. 27 *Eliz. c.* 13. and also of this act, be made, shall limit at their discretion some certain reasonable time within which such taxtions and assessments shall be levied

and collected, which time shall not exceed 30 days; and also if any such officer who is to levy and collect such taxations and assessments, shall refuse or neglect to levy and collect the same within such time as shall be so limited, or shall refuse or neglect to pay and deliver over the sums of money so levied and collected to the said sheriff, and also to the said justices, in such manner as the same in the several cases hereinbefore mentioned are respectively directed to be paid, within the respective times hereinbefore limited for such payment thereof, every such offender shall, for every such refusal or neglect, forfeit double the sum appointed to be by him levied and collected as aforesaid. 8 G.2. c.16.

§ 11. Every constable, borsholder, headborough, or tithingman, to whom notice shall be given, or at whose dwelling-house notice of any robbery shall be left as aforesaid, and every constable of the hundred, and every constable, borsholder, headborough, or tithingman, of any town, parish, village, hamlet, or tithing, within the hundred, or the franchises within the precinct thereof, wherein such robbery shall happen, as soon as the same shall come to his knowledge, either by notice from the party or parties robbed, or from any other person or persons to whom notice shall be given thereof, pursuant to this present or any other statute, shall with the utmost expedition make and cause to be made fresh suit and *hue and cry* after the felon or felons by whom such robbery shall be committed; and if any constable, borsholder, headborough, or tithingman, shall offend in the premises by refusing or neglecting to make or cause to be made such fresh suit and *hue and cry* as aforesaid, every such offender shall for every such refusal or neglect forfeit *5l.*

§ 12. Every forfeiture hereby incurred shall be recovered with full costs of suit, and shall be as to one moiety thereof to the use of the king, and as to the other moiety thereof, to the use of such person or persons as shall sue for the same, within six months next after such forfeiture shall be incurred, by action of debt, bill, plaint, or information.

§ 13. If any action, suit or information shall be commenced or prosecuted against any person or persons for any thing done in pursuance of this or either of the herein-before recited statutes; in every such case the defendant may plead the general issue, and give this and the aforesaid statutes or either of them and the special matter in evidence, and upon nonsuit or discontinuance, or verdict against the plaintiff, or judgment against him, upon demurrer or otherwise, the defendant shall recover full costs, for which he shall have the like remedy as defendants have by law in other cases of costs.

By 22 *G.* 2. *c.* 24. No person shall recover against any inhabitant of any hundred in any action on any of the statutes of *Hue and Cry*, more than the value of 200*l.*, unless the person or persons so robbed shall, at the time of such robbery for which such action shall be brought, be together in company, and be in number two at the least, to attest the truth of his or their being so robbed. See this provision re-enacted as to receivers-general by stat. 3 *G.*4. *c.* 88. § 10. superseding stat. 38 *G.* 3. *c.* 5. § 21., Vol. III. tit. Land Tax, § VII.

22 G.2. c.24. No person to recover more than 200*l.* unless at the time of robbery there be two present.

A. **A. Warrant to levy hue and cry on a robbery having been committed.** See p. 1059.

Westmorland } To all constables and other officers, as well in
to wit. } the said county of *Westmorland* as elsewhere, to whom the execution hereof doth or shall belong.

WHEREAS A. I., *of* ———, *in the county of* ———, *yeoman, hath his day made information upon oath before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* W., *that on this present* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *betwixt the hours of three and four in the afternoon of the same day, at a place called* ———, *in the said county of* W., *in the king's highway there, two malefactors and felons to him the said* A. I. *unknown, in and upon him the said* A. I., *then and there being in the peace of God, and of our lord the king, feloniously did make an assault, and him the said* A. I. *then and there feloniously did put in great fear and danger of his life, and the sum of* ———, *of lawful money of* Great Britain, *of the goods and chattels of him the said* A. I., *from the person and against the will of him the said* A. I., *then and there violently and feloniously did steal, take, and carry away; and that one of the said malefactors and fellons, to him the said* A. I. *unknown, is a tall, strong man, and seemeth to be about the age of* ——— *years, is pitted in the face with the small pox, and hath the scar of a wound under his left eye, and had then on a dark brown riding coat, &c., and did ride upon a bay gelding with a star on his forehead, and the other, &c. And that after the said felony and robbery committed, they the said malefactors and felons, to him the said* A. I. *unknown, did fly and withdraw themselves to places unknown, and are not yet apprehended: These are therefore to command you forthwith to raise the power of the towns within your several precincts, and to make diligent search therein for the persons above described, and to make fresh pursuit and hue and cry after them from town to town and from county to county, as well by horsemen as by footmen; and to give due notice thereof in writing, describing in such notice the persons and the offence aforesaid, unto every next constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you or any of you shall, as well upon such search and pursuit as otherwise, apprehend, or cause to be apprehended, as justly suspected for having committed the said robbery and felony, that you do carry forthwith before some one of his said majesty's justices of the peace in and for the county where he or they shall be so apprehended, to be by such justice examined, and dealt withal according to law. And hereof fail you not respectively, upon the peril that shall ensue thereon. Given under my hand and seal,* ———, *in the said county of* W. *the* ——— *day of* ——— *aforesaid, in the year aforesaid.*

B. Notice to the constable of a robbery committed, and to be inserted in the Gazette. See stat. 8 *G.* 2. *c.* 16. § 1. p. 1064. — B. The forms B. C. D. E. and F. are from Too. MM. p. 363. *et seq.*

NOTICE is hereby given (pursuant to an act of parliament made in the 8*th year of the reign of his majesty king* George *the second, intituled* " An act for the amendment of the law relating to actions on the statute of hue and cry,") *that* A. B., *of* ———, *in the county of* ———, *on the* ——— *day of* ——— *now last past, between the hours of* ——— *and* ——— *in the* ——— *noon of the same day, was stopped and robbed by* ——— *persons in the public highway, between* ——— *and* ———, *in the county of* ——— ———, *one of them being, &c. and the other, &c.* [describe the figure, colour, clothes, &c. of the parties and their horses] *which persons took from the person of the said* A. B. ——— *guineas in gold,* ——— *shillings in silver, and a silver watch* [as the case may be].

A. B.

C. Examination of a person robbed, before action brought. See stat. 27 *El. c.* 13. § 11. p. 1063. — C.

County of ——— to wit. } *THE examination of* A. B. *of* ———, *gent., taken on oath before me* S. P. *esq. one of his majesty's justices of the peace in and for the said county, dwelling in* [or *near to*] *the hundred of* ———, *within the said county, the* ——— *day of* ———, *in the* ——— *year of the reign of, &c. who saith, that on the* ——— *day of* ——— *instant, between the hours of* ——— *and* ——— *in the* ——— *noon of the same day, at or near to* ———, *he was assaulted in the highway leading from* ——— *to* ——— *by two men on horseback, one being* [describe their persons &c.] *and that he the said* A. B. *was by them robbed of* ———, *&c., and that he the said* A. B. *did not then know nor doth now know either of the persons who committed the said robbery, and that the said highway in which he was robbed is in the parish of* ———, *within the hundred of* ———, *in the said county of* ———. *Taken and signed the day and year above written.*

D. Affidavit of an applicant for the reward of 10*l.* See stat. 8 G. 2. *c* 16. § 9. p. 1066. — D.

County of ——— to wit. } *BE it remembered, that this* ——— *day of* ——— *in the year of our lord* 18—, *at* ——— *in the hundred of* ———, *in the said county, one* C. D. *of* ———, *in his proper person cometh before us,* J. C. *and* S. P. *esquires, two of his majesty's justices, &c. and on his corporal oath before us the said justices to the said* C. D. *now here administered, maketh proof before us the said justices, that he the said* C. D. *did this day apprehend and secure one* E. F. *charged on the hue and cry, and also on the examination on oath of* G. H. *gent., taken in writing the* ——— *day of* ———, *before* J. C. *one of us the undersigned justices, for that he the said* E. F. *on the* ——— *day of*

——— *now last past, at the parish of* ——— *within the hundred of* ——— *in the said county, in the king's highway there, about the hour of* ——— *in the* ——— *noon of the same day, in and upon the said* G. H. *feloniously did make an assault, and him the said* G. H. *in bodily fear and danger of his life feloniously did put, and one gold watch, &c.* [describe the articles stolen] *of the goods and chattels of the said* G. H. *from the person and against the will of the said* G. H. *in the highway aforesaid, within the said hundred of* ———, *then and there feloniously and violently did steal, take and carry away, as by the said examination in writing will more fully appear. And the said* C. D. *further maketh proof before us the said justices, that the said* G. H. *on the* ——— *day of* ——— *now last past, did duly cause an advertisement of the said highway robbery to appear in the* London Gazette, *published on the said last mentioned day, and that the said* G. H. *hath, as this informant verily believes, duly complied with all the requisites of the several statutes in this behalf made and provided, legally to entitle him to bring and maintain his action at law against the said hundred of* ———, *to recover damages for the said highway robbery; and the said* C. D. *further maketh it appear to the satisfaction of us the said justices, that by the said apprehension of the said felon by him the said* C. D. *within* 40 *days next after the insertion of such advertisement of the said highway robbery as aforesaid in the* London Gazette, *the said hundred of* ——— *hath become actually indemnified from any action at law at the suit of the said* G. H., *for or on account of the said highway robbery, whereby the said* C. D. *is become entitled to a reward of* 10*l. from the said hundred, and therefore prays the order of us the said justices for the said reward, and for a rate or assessment to be made on the inhabitants of the hundred of* ———, *in the said county of* ———, *to levy and collect the sum of* 10*l. on the said inhabitants of the said hundred of* ——— *for the use of him the said* C. D., *for such reward as aforesaid, according to the form of the statute in that behalf made and provided.* C. D.

Exhibited on oath before us, this
——— *day of* ———, 18—,

J. C.
S. P.

E.

E. Order thereon for the 10*l*. reward.

County of ——— to wit. } *WHEREAS* [recite the affidavit as in the last precedent]: *now we the said justices, upon due proof and consideration had of the premises, in pursuance of the statute in that case made and provided, do hereby order the said reward of* 10*l. to be paid to the said* C. D. *by the inhabitants of the said hundred of* ———, *and for the purpose of levying and collecting the said sum of* 10*l., we do hereby make the rate and assessment hereto annexed upon the several parishes and townships within the said hundred. And we do hereby order the high constable of the said hundred forthwith to give notice of this our order, and of the assessment hereunto annexed to all petty constables of all parishes and townships within the said hundred, and to collect from the said petty constables the several sums in the*

annexed rate respectively assessed on and set opposite to the names of the said several parishes and townships, within twenty days from the date hereof, and to pay over the several sums so levied and collected within ten days next after the same shall be so levied and collected, into the hands of us the said justices, or into the hands of one of us, for the use of the said C. D.*; and you the said petty constables are ordered within your respective parishes and townships, immediately on notice of this our order, to make an equal rate respectively on the inhabitants of each your several parishes and townships, to levy and collect the several sums by us the said justices assessed on them, and set opposite to the several names of the said parishes and townships respectively in the rate hereunto annexed; and that you levy, collect, and pay the said several sums so respectively to be levied and collected into the hands of the high constable of the hundred of* ——— *within such time as the said high constable shall for that purpose appoint, not exceeding the space of fourteen days from the date hereof. Given under our hands and seals, &c.*

F. Form of the assessment. See stat. 8 *G.* 2. *c.* 16. § 9. p. 1066. F.

Hundred of ——— in the county of ———.

AN assessment made by us, two of his majesty's justices of the peace in and for the county of ———*, acting in and for the hundred of* ———*, in the said county, this* ——— *day of* ———*, in the year of our lord* 18—*, on the several parishes and townships within the said hundred of* ———*, to collect the sum of* 10*l. for the purposes in the order hereunto annexed mentioned.*

The township of A. - -	1	10	0
The parish of B. - -	0	15	0
The parish of, &c. &c. - -			

Made and allowed by us, this ——— *day of* ———, 18—.

J. C.
S. P.

Hundred.

[13 Edw. 1. st. *Wynt.* c. 1. c. 2.—28 Edw. 3. c. 11.—27 Eliz. c. 13.—29 Car. 2. c. 7.—1 G. 1. st. 2. c. 5.—1 G. 1. st. 2. c. 8.—6 G. 1. c. 16.—9 G. 1. c. 22.—8 G. 2. c. 20.—10 G. 2. c. 32.—11 G. 2. c. 22.—19 G. 2. c. 34.—22 G. 2. c. 24.—29 G. 2. c. 36.—31 G. 2. c. 41.—36 G. 3. c. 9.—41 G. 3. (U.K.) c. 24.—52 G. 3. c. 130.—56 G. 3. c. 125.—57 G. 3. c. 19.—3 G. 4. c. 33.]

Hundred, whence so called.

IN ancient times, before the conquest, it was ordained, for the more sure keeping of the peace, that all free born men should cast themselves into several companies, by ten in each company; and that every of those ten men should be surety and pledge for the forthcoming of his fellows. For which cause, these companies in some places were called *Tithings*, as containing the

Tithings.

number of ten men with their families; and even as ten times ten do make an hundred, so because it was then also appointed that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general assembly was, and yet is, called an *hundred*. *Lamb. Const.* p. 6.

Hundred to be amerced for an escape.

If any homicide be committed, or dangerous wound given in the day-time, and the offender escape; the town shall be amerced; and if out of the town, the hundred shall be amerced. 2 *Haw. c.* 12. § 2.

Hundred answerable in in other cases.

The principal statutes, by which the hundredors are made answerable for damages, are, first, the statutes of *Hue* and *Cry*, 13 *Ed.* 1. *st. Wynt. c.* 1. *c.* 2. — 28 *Ed.* 3. *c.* 11. — 27 *Eliz. c.* 13. — 8 *G.* 2. *c.* 16. and 22 *G.* 2. *c.* 24.; secondly, the *Riot* Act, 1 *G.* 1. *st.* 2. *c.* 5. (*a*); and thirdly, the *Black* Act, 9 *G.* 1. *c.* 22. (*b*)

Proceedings against hundreds.

In proceedings against *hundredors* on the statutes of *Hue* and *Cry*, it seems that the process might have been formerly served on any inhabitant of the hundred; but now, by stat. 8 *G.* 2. *c.* 16. § 4., " No process for appearance in any action, to be brought upon the said statutes, or either of them, against any hundred, shall be served on any inhabitant thereof, save only upon the high constable or high constables of the hundred wherein the robbery shall happen, who is and are hereby required to cause public notice thereof to be given in one of the principal market towns within such hundred, on the next market day after he or they shall be served with such process, or if there shall happen to be no market town within such hundred, then in some parish church within the same hundred immediately after divine service, on the *Sunday* next after his or their being served with such process, and he or they is and are also hereby empowered and required to enter, or to cause to be entered, an appearance in the said action, and also defend the same for and on behalf of the inhabitants of the said hundred, as he or they shall be advised; and in case the plaintiff or plaintiffs in such action shall recover and obtain judgment therein, then no process of execution shall be served on any particular inhabitant or inhabitants of the said hundred, or any franchise within the precinct thereof, nor on the said high constable or high constables; but the sheriff or his officer shall, upon the receipt of any writ or writs of execution to him directed in pursuance of the said judgment, (instead of serving the said writ or writs on any inhabitant or inhabitants) cause the same to be produced and shewn *gratis* unto two justices of the peace of the said county, riding or division, (whereof one to be of the *quorum*) and residing within the said hundred, or near unto the same, who

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(*a*) For the cases decided on this statute see *Reid* v. *Clarke and others*, 7 *T.R.* 496. *R.* v. *Hundred of Halfshire*, 5 *T. R.* 341. *Lord King* v. *Chambers and others*, 1 *Stark. N. P.* 195. *Beckwith* v. *Wood and others*, 2 *Stark. N. P.* 263. *Pritchett* v. *Waldron*, 5 *T. R.* 14. *Marriot* v. *Cooke*, 1 *Price*, 249. *Rea* v. *Wood*, 2 *Stark. N. P.* 269. *Burrows* v. *Wright*, 1 *East*, 615. *Ratcliffe* v. *Eden and others*, *Cowp.* 485. *Greasley* v. *Higginbotham*, 1 *East*, 636. *Hyde* v. *Cogan*, *Doug.* 673. *Jackson* v. *Pierson*, 2 *B.* & *C.* 304.

(*b*) For the cases decided on this statute see *Cooke* v. *Hundred of Pimhill*, 8 *East*, 173. *Fowler* v. *Inh. of Loumborough*, 1 *Brod.* & *Bing.* 64. *King* v. *Inh. of Bishop's Sutton*, 2 *Str.* 1247. *Thurtell* v. *Hundred of Mulfort*, 3 *East*, 400. *Nesham and others* v. *Armstrong and others*, 1 *B.* & *A.* 146. *Thornhill* v. *Inhs. of Huddersfield*, 11 *East*, 349. *Jackson* v. *Pearson and Squirrel*, 1 *B.* & *C.* 304. *Curtis*, Bt., *and Another* v. *Hundred of Godley*, *T.* 1824. 3 *B.* & *C.* 248.

shall thereupon, with all convenient speed, cause such taxation and assessment to be made, and to be levied and collected in such manner as is prescribed in and by the statute made in the 27th year of the reign of queen *Elizabeth*, (viz. *c.* 13.) in which taxation and assessment there shall be provided and included, over and above what the costs and damages recovered by the plaintiff or plaintiffs in such action shall amount to, all such just and necessary expences which any high consatble or high constables of any hundred hath or have been, or shall be at, in having defended any such action as aforesaid, claim being made thereto by such high constable or high constables before the said justices, upon due notice being given to him or them by the said justices for that purpose; and the sums of money so to be levied and collected, shall be paid over and delivered (by such officer or officers, as by the said statute made in the 27th year of the reign of queen *Elizabeth*, are to levy and collect the same,) within ten days after such collection, to the sheriff of the county wherein the robbery shall happen, to the use and behoof of the plaintiff or plaintiffs in such action, for so much as the costs and damages by him, her, or them recovered shall amount to, and to the use and behoof of the said high constable or high constables, for so much as his or their expences in defending the said action shall amount to, of which the said high constable or high constables shall give in an account, and make due proof upon oath, to the satisfaction of the said justices, before any taxation or assessment shall be made for the reimbursing such high constable or high constables, (which oath the said justices are hereby authorised and required to administer) and shall in such expences have no further allowance toward paying an attorney to defend the said action, than what such attorney's bill shall be taxed at by the proper officer of that court where such action shall be brought, which the said high constable or high constables shall cause to be taxed for that purpose." 8 G.2. c.16.

By the riot act, 1 *G.* 1. *st.*2. *c.*5. § 6. "If any church or chapel or any building for religious worship, certified and registered according to stat. 1 *W.* & *M.* *sess.* 1. *c.*18., or any dwelling house, barn, stable, or out-house shall be demolished or pulled down, wholly or in part by any persons unlawfully, riotously, and tumultuously assembled, then in case such church, chapel, building for religious worship, dwelling house, barn, stable, or out-house, shall be out of any city or town, that is either a county of itself, or is not within any hundred, the inhabitants of the hundred in which such damage shall be done, shall be liable to yield damages to the person or persons injured and damnified by such demolishing or pulling down, wholly or in part; and such damages shall be recovered by action to be brought in any of H. M.'s courts of record at *Westminster*, (wherein no essoin, protection, or wager of law, or any imparlance, shall be allowed) by the person or persons damnified thereby against two or more of the inhabitants of such hundred, such action for damages to any church or chapel, to be brought in the name of the rector, vicar, or curate of such church or chapel shall be so damnified, in trust for applying the damages to be recovered, in rebuilding or repairing such church or chapel; and judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or

1 G.1. stat.2. c 5.
How damages shall be made good if any church, &c. be demolished.

1 G. 1. st. 2. c. 5. administrators, be raised and levied on the inhabitants of such hundred, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the statute made in the 27th year of the reign of queen *Elizabeth*, for reimbursing the person or persons, on whom any money recovered against any hundred, by any party robbed, shall be levied. And in case any such church, chapel, building for religious worship, dwelling house, barn, stable, or out-house so damnified shall be in any city or town, that is, either a county of itself, or is not within any hundred, then such damages shall and may be recovered by action, to be brought in manner aforesaid (wherein no essoin, protection or wager of law, or any imparlance shall be allowed,) against two or more inhabitants of such city or town; and judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered, shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, made to the justices of the peace of such city or town, at any quarter sessions to be holden for any such city or town, be raised and levied on the inhabitants of such city or town, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the said statute made in the 27th year of the reign of queen *Elizabeth*, for reimbursing the person or persons, on whom any money recovered against any hundred by any party robbed shall be levied."

§ 7. "This act shall be openly read at every sessions, and at every leet or law day."

§ 8. "No person or persons shall be prosecuted by virtue of this act for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed."

Upon this act it does not seem to be necessary to proceed by original. *Tidd's Prac.* Vol. I. p. 143. 7th edit.

9 G. 1. c. 22. By stat. 9 *G.* 1. *c.* 22. § 7. (*the Black Act*) "the inhabitants of every hundred shall make full satisfaction and amends to every person, his executors and administrators, for the damages he shall have sustained or suffered by the killing or maiming of any cattle, cutting down, or destroying any trees, or setting fire to any house, barn, or outhouse, hovel, cock, mow, or stack of corn, straw, hay, or wood, which shall be committed or done by any offender or offenders against this act, and every person who shall sustain damages by any of the offences last mentioned shall be and are hereby enabled to sue for and recover such his damages, the sum to be recovered not exceeding the sum of 200*l.*, against the inhabitants of the said hundred, who by this act shall be made liable to answer all or any part thereof; and if such person shall recover in such action, and sue execution against any of such inhabitants, all other the inhabitants of the hundred, who by this act shall be made liable to all or any part of the said damage, shall be rateably and proportionably taxed for and towards an equal contribution for the relief of such inhabitant, against whom such execution shall be had and levied, which tax shall be made, levied, and raised by such ways and means, and in such manner and form, as is prescribed and mentioned for the levying and raising damages recovered against inhabitants of hundreds, in cases of robberies, in and by an act intituled '*An act for the following hue and cry,*' made in the 27th year of queen *Eliz.*

§ 8. " No person shall be enabled to recover by virtue of this act, unless he, by himself or by his servant, within two days after such damage or injury done him, by any such offender or offenders as aforesaid, shall give notice of such offence done and committed unto some of the inhabitants of some town, village, or hamlet, near unto the place where any such fact shall be committed, and shall, within four days after such notice, give in his examination upon oath, or the examination upon oath of his servant or servants that had the care of his houses, outhouses, corn, hay, straw, or wood, before any justice of the peace of the county, liberty, or division where such fact shall be committed, inhabiting within the said hundred where the said fact shall happen to be committed, or near unto the same, whether he do know the person or persons that committed such fact, or any of them; and if, upon such examination, it be confessed that he does know the person or persons that committed the said fact, or any of them, that then he so confessing shall be bound by recognizance to prosecute such offender or offenders, by indictment or otherwise, according to the laws of this realm. 9 G.1. c.22.

§ 9. " Provided also that where any offence shall be committed against this act, and any one of the said offenders shall be apprehended, and lawfully convicted of such offence, within the space of *six* months after such offence committed, no hundred, or any inhabitants thereof, shall in any wise be subject or liable to make any satisfaction to the party injured for the damages he shall have sustained, any thing in this act to the contrary notwithstanding.'

The execution, upon these acts, is regulated by stat. 22 *G.* 2. *c.* 46. § 34., by which it is enacted, " that no writ of execution hereafter to be sued out against the inhabitants of any hundred, on any judgment obtained by virtue of any act or acts of parliament whatsoever, shall be levied on any particular inhabitant or inhabitants of such hundred, but the sheriff or sheriffs shall, on the receipt of every such writ, cause the same to be produced to two justices of the peace, in such manner as is directed by the statute made in the eighth year of his present majesty's reign, intituled ' *An act for the amendment of the law relating to actions on the statute of hue and cry,*' and that thereupon the said justices shall, in the manner directed by the said act, cause a taxation to be made, levied, and collected, for raising and paying, as well the costs and damages recovered by the plaintiff or plaintiffs, and also all such just and necessary expences, as any inhabitant or inhabitants of such hundred shall have been at in defending any such action, the same being first proved on oath, and the attorney's bill being first taxed, in such manner as the said act directs; and the sums of money so to be levied and collected shall, within the time by the said act limited, be paid to the sheriff or sheriffs, and by him or them paid or delivered over to the persons entitled to receive the same, without any deduction, fee, or reward whatsoever." 22 G.2. c.46. Execution upon these statutes.

It seems that under this act, a writ of execution, sued out by the party who has recovered damages upon the riot act, and delivered by the sheriff to the justices, is a good foundation for an order to levy the amount.

But it has been determined that the order of such justices in

such case, directing the money, when levied, to be paid into the hands of a banker, subject to their further order, is bad. *R.* v. *Inhabitants of Hundred of Halfshire,* 5 *T. R.* 341.

It seems, also, that the order for levying the money ought to be upon the inhabitants of the *towns, parishes, villages,* and *hamlets,* pursuant to the statute of 27th *Eliz.,* and not upon the inhabitants of the districts and parishes within the hundred. *Id. ibid.*

Other cases in which the hundred is liable to make good the damages.
10 G.2. c.32.
11 G.2. c.22.
19 G.2. c.34.
36 G.3. c.9.

There are other statutes which make the hundred liable to the action of the party injured, such as 8 *G.* 2. *c.* 20. § 6. for destroying turnpikes or works on navigable rivers; 10 *G.* 2. *c.* 32. § 4. for cutting hop binds; 11 *G.* 2. *c.* 22. § 5. for destroying corn to prevent exportation; 19 *G.* 2. *c.* 34. (*a*) for wounding officers of the customs; 36 *G.* 3. *c.* 9. § 2. for unlawfully stopping or seizing any wheat, &c. in or on the way to or from any city or market town, or wilfully or maliciously breaking, cutting, or destroying any waggon, &c. wherein any such wheat, &c. shall be loaded, or the harness of any horse or horses drawing or carrying the same, or unlawfully taking off from any such carriage, or driving away, killing, or wounding any such horse or horses, or taking or carrying away, destroying, scattering abroad, spoiling, or damaging such wheat, &c., or any part thereof; 41 *G.* 3. (U. K.) *c.* 24. (*b*) for demolishing or pulling down mills, wholly or in part, or any of the works thereunto belonging (*c*); 52 *G.* 3. *c.* 130. § 2. for demolishing or pulling down, or beginning to demolish or pull down erections and buildings, or engines used and employed in carrying on or conducting any trade or manufactory, &c. (see *Nesham* v. *Armstrong and Others,* 1 *B. & A.* 146.); 56 *G.* 3. *c.* 125. for demolishing, pulling down, destroying, or damaging, or beginning to demolish, &c. any fire engine, or other engine erected for working collieries, &c., or any bridge, waggon-way, or trunk for conveying coals, &c., or for shipping the same, or any staith, &c.; and 57 *G.* 3. *c.* 19. § 38. for destroying or damaging any house, shop, or other building, or any fixtures thereto attached, or any furniture, goods, or commodities therein (*d*); and by the statutes 1 *G.* 1. st. 2. *c.* 48., 6 *G.* 1. *c.* 16. § 1., 29 *G.* 2. *c.* 36., 31 *G* 2. *c.* 41, a remedy is given to the party injured, against the inhabitants of the adjoining parish, &c. for destroying and damaging trees, &c. (See *Thornhill* v. *Huddersfield,* 11 *East,* 349.)

41 G.3. (U.K.) c.24.
52 G.3. c.130.
56 G.3. c.125.
57 G.3. c.19.
1 G.1. st.2. c.48.
6 G.1. c.16.
29 G.2. c.36.
31 G.2. c.41.

Sheriff's return to writ of execution.

In following up a writ of execution to its consummation, under the statute of hue and cry, 8 *G.* 2. *c.* 16., which the subsequent statute of 19 *G.* 2. *c.* 34. refers to and adopts as the mode of proceeding in case of a penalty recovered by the executor of a revenue officer killed in pursuit of smugglers, against the inhabitants of the hundred (or of a *Lathe* in *Kent,*) it is sufficient for the sheriff, to whom the writ had been delivered, to return, even after the expiration of *sixty* days given him by the act to return the writ, that he had delivered it to the justices of the peace of the

(*a*) *Grosvenor, Executor, &c.* v. *The Lathe of St. Augustine, in Kent,* 12 *East,* 244. Vol. II. p. 38.

(*b*) For the cases decided on this statute see *Rushforth* v. *Beatson and Others,* 1 *Price,* 343. *Marriott* v. *Cooke, id.* 349. note. *Hill* v. *Hundred of Shrewsbury,* 3 *East,* 457.

(*c*) See 3 *East,* 457. 2 *Marsh,* 362.

(*d*) For the cases decided on this statute, see *Allen* v. *Ayre,* 3 *Dowl. & Ryl.* 96. *Clarke* v. *Burdett and Another,* 2 *Stark. N. P.* 504.

hundred, &c. who are charged with the duty of directing the levy on the inhabitants, and that they had done nothing upon it; and the K. B. will not thereupon attach the sheriff for not returning the writ, but the next proceeding is against the magistrates, to oblige them to do their duty. *Wright and Another* v. *Inhab. of the Lathe of St. Augustine,* (*Kent,*) *E.* 51 *G.* 3. 13 *East,* 544.

By stat. 29 *Car.* 2. *c.* 7. § 5. "If any person whatsoever which shall travel upon the Lord's day shall be then robbed, no hundred, or the inhabitants thereof, shall be charged with or answerable for any robbery so committed, but the person so robbed shall be barred from bringing any action for the said robbery, any law to the contrary notwithstanding. Nevertheless the inhabitants of the counties and hundreds (after notice of any such robbery to them or some of them given, or after hue and cry for the same to be brought) shall make or cause to be made fresh suit and pursuit after the offenders, with horsemen and footmen according to stat. 27 *Eliz.* *c.* 13., upon pain of forfeiting to the king as much money as might have been recovered against the hundred by the party robbed if this law had not been made. **29 C.2. c.7. Robbery of persons travelling on the Lord's day.**

Tashmaker v. *The Hundred* of *Edmonton,* 1 *Str.* 406. *Com.* 345. The plaintiff lived a mile or two from the church, and going thither with his lady in his coach on a *Sunday* was robbed, and brought his action against the hundred, and recovered; for the statute extends only to the case of *travelling.* But *Pratt* C. J. said, if they had been going to make visits, it might have been otherwise.

The clause of limitation, as to the time within which remedial proceedings against the hundred are directed to be commenced by stat. 27 *Eliz.* *c.* 13. is not adopted by stat. 1 *G.* 1. *st.* 2. *c.* 5., nor consequently by any of the subsequent statutes, relating to the demolishing or pulling down of *mills,* &c.; and there is, therefore, no restriction now in force, as to the time of bringing the action, or parties entitled to the indemnifying provisions of the latter statutes. 1 *Price,* 343. See p. 1076. n. (*b*) **Limitation of actions against the hundred.**

By stat. 3 *G.* 4. *c.* 33., (*a*) intituled *An act for altering and amending several acts passed in the first and ninth years of the reign of king* George *the first, and in the forty-first, fifty-second, fifty-sixth, and fifty-seventh years of the reign of his late majesty king* George *the third, so far as the same relate to the recovery of damages committed by riotous and tumultuous assemblies and unlawful and malicious offenders."* — After reciting stats. 27 *Eliz.* *c.* 13., 1 *G.* 1. *st.* 2. *c.* 5., 9 *G.* 1. *c.* 22., 41 *G.* 3. *c.* 24., 52 *G.* 3. *c.* 130., 56 *G.* 3. *c.* 125., and 57 *G.* 3. *c.* 19.; and whereas great expences are incurred in recovering a compensation for small damages by proceeding under actions at law, in compliance with the directions of the said recited acts, the costs greatly exceeding in many instances, the amount of the damages: and whereas for the relief of the inhabitants of several cities, towns, cinque ports, ancient towns, corporate towns, hundreds, rapes, wapentakes, lathes, ridings, divisions, and liberties in which such mischief may be done by riotous and disorderly persons, or may be done unlawfully and maliciously, it will be attended with great public benefit, that the damages not exceeding a certain amount should be re- **3 G.4. c.33.**

(*a*) See *Espinasse's* Actions on Statutes, p. 328, &c.

3 G.4. c.33. No action to be brought against the inhabitants of any place unless damage exceed 30*l.*

covered by a shorter and more summary process than as directed by the said recited acts; it is therefore enacted, that " it shall not be lawful for any person or persons whomsoever in *England*, where the loss, injury, or damage claimed and alleged to have been sustained shall not exceed the sum of 30*l.*, to commence, bring, or prosecute any action or actions at law in any of H. M.'s courts of record, against the inhabitants of the city, town, cinque port, ancient town, corporate town, or liberty of any cinque port, hundred, rape, wapentake, lathe, riding, division, or liberty, where such loss, injury, or damage shall have been done or committed, as directed by the said recited acts respectively, for or on account of the loss, injury, or damage sustained by the demolishing, pulling down, destroying, or damaging, wholly or in part, of any church, chapel, or any building for religious worship duly certified and registered, or any dwelling house, barn, stable, or outhouse, by any persons unlawfully, riotously, and tumultuously assembled; or for or on account of any loss, injury, or damage sustained by the demolishing or pulling down, wholly or in part, of any wind saw-mill, or other wind mill, or any water mill or other mill, or any of the works thereunto belonging, by any persons unlawfully, riotously, and tumultuously assembled; or for or on account of the loss, injury, or damage sustained by the unlawfully and with force demolishing or pulling down, or beginning to demolish or pull down any erection and building or engine used or employed in carrying on or conducting of any trade or manufactory, or any branch or department of any trade or manufactory of goods, wares, or merchandizes of any kind or description whatsoever, in which any wares, goods, or merchandize shall be warehoused or deposited, by any person or persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace; or for or on account of the loss, injury, or damage sustained by the unlawfully and with force demolishing, pulling down, destroying, or damaging any fire engine or other engine erected or to be erected for the making, sinking, or working collieries, coal mines, or other mines, or any bridge, waggon way, or trunk erected or made, or to be erected or made, for conveying coals or other minerals from any colliery, coal mine, or other mine, to any place, or for shipping the same, or any staith or other erection or building for depositing coals or other minerals, or used in the management or conducting of the business of any such colliery, coal mine, or other mine, by any person or persons unlawfully, riotously, and tumultuously assembled together, in disturbance of the public peace: or for or on account of any house, shop, or other building whatsoever, or any part thereof, being destroyed or in any manner damaged or injured, or any fixtures thereto attached, or any furniture, goods, or commodities which shall be therein, being destroyed, taken away, or damaged, by the act or acts of any riotous or tumultuous assembly of persons, or by the act or acts of any person or persons engaged in or making part of such riotous or tumultuous assembly; or for or on account of the loss, injury, or damage sustained by the unlawfully or maliciously killing or maiming of any cattle, cutting down or destroying any trees, setting fire to any house, barn, or outhouse, hovel, cock, mow or stack of corn, straw, hay, or wood; or for or on account of the loss, injury, or damage sustained by the setting fire to or destroying any ricks or thrashing machines, by the act

or acts of any riotous or tumultuous assembly of persons; but that the amount of such damage or injury shall and may be recovered only by the ways and means hereinafter directed." 3 G.4. c.33.

§ 2. Enacts, "that in every case in *England* where any house, shop, or other building whatever, or any part thereof, shall be destroyed, or shall be in any manner damaged or injured, or where any fixtures thereto attached, or any furniture, goods, or commodities whatsoever which shall be therein, shall be destroyed, taken away, or damaged, or any church, chapel, or any building for religious worship, dwelling-house, barn, stable, or outhouse, or any such wind saw-mill, or other wind-mill, or any water-mill, or other mill, or any of the works thereto belonging, or any such erection or building or engine, or any such fire engine or other engine, erected or to be erected as aforesaid, or any such bridge, waggon-way or trunk, or any such staith or other erection or building for depositing coals or other minerals as aforesaid, so pulled down, demolished, destroyed, or damaged, wholly or in part; or any such killing or maiming of any cattle, cutting down or destroying any trees, setting fire to any house, barn, or outhouse, hovel, cock, mow, or stack of corn, straw, hay, or wood, done or committed, or setting fire to or destroying any ricks or thrashing machines; and where the loss, injury, or damage claimed or alleged to have been sustained, shall not exceed in amount the sum of 30*l.*, it shall and may be lawful for the party or parties damnified or injured, and he, she, and they are hereby directed, within one calendar month next after such damage or injury shall have been sustained, to give notice in writing, in the form in the schedule hereunto annexed, to the high constable of the hundred, rape, wapentake, lathe, riding, division, or liberty, or to the mayor or other chief magistrate of such city, town, or place in which such loss, injury, or damage shall have been suffered or sustained, and where there is no high constable, to the churchwardens or overseers, or to any two substantial householders not being interested, or left at their respective last or usual places of abode, of such riotous or tumultuous assembly having taken place, and the nature and amount of the loss, injury, or damage sustained, and of his, her, and their intention of calling upon the inhabitants of such city, town, cinque port, ancient town, corporate town, hundred, rape, wapentake, lathe, riding, division, or liberty, to make good such loss, injury, or damage; and the said high constable, mayor, or other chief magistrate, churchwardens or overseers, or inhabitants, as the case may be, is and are forthwith to give notice in writing thereof to the magistrates residing in or acting for such city, town, hundred, rape, wapentake, lathe, riding, division or liberty, who shall thereupon appoint a special petty session to be holden within 30 days next after the receipt of such notice, of all the magistrates residing in or acting for such city, town, cinque port, ancient town, corporate town, hundred, rape, wapentake, lathe, riding, division or liberty, to hear and determine of any complaint which may be then and there brought before them, for or on account of any such damage or injury having been sustained by or through the means aforesaid; and the party or parties so damnified and injured is and are hereby directed to give notice, or cause a notice in writing, in the form in the schedule hereunto annexed, to be placed on the church or

Where damages are sustained, the parties injured are to give notice to the high constable, mayor, or chief magistrate;

who are thereupon to give notice to the magistrates, who are to summon a petty session.

3 G.4. c.33.

chapel door, or most conspicuous place of the parish, township, or place in which such loss, injury, or damage shall have been sustained, on two successive *Sundays* next preceeding the day of holding of such special petty session, of the intent and purpose for which such special petty session is to be held.

Neglecting to give notice, high constable, &c. may be sued for damages.

§ 3. Enacts, "that in case the high constable, mayor, or other chief magistrate, churchwardens, overseers, or substantial householders as aforesaid, shall neglect or refuse to give such notice as last herein-before directed and required, then it shall and may be lawful to and for the party or parties so damnified to sue such high constable, mayor, or other chief magistrate, churchwardens, overseers, or substantial householders (as the case may be), for the amount of such damages, by action of debt or on the case, in any of H. M.'s courts of record at *Westminster*, wherein no essoign, protection, privilege, wager of law, or more than one imparlance shall be allowed."

Prescribing the power of the magistrates in such petty session.

§ 4. Enacts, "that it shall and may be lawful to and for the justices, or any two of them, at such special petty session, or any adjournment thereof, in *England*, to hear and examine the party or parties aggrieved, and the churchwardens or overseers or inhabitants of the parish, township, or place, and his or their several witnesses, upon oath or affirmation, (which oath or affirmation the said justices are hereby authorized and empowered to administer), touching or concerning such riotous and tumultuous assembly, and the damage thereby sustained; and thereupon the said justices or any two of them, shall, if they find that the complainant or complainants hath or have suffered any loss, injury, or damage by the means aforesaid, make an order or adjudication of the sum or sums of money to be paid to the party or parties aggrieved, together with his, her, or their reasonable costs and charges, and also the costs and charges (if any) of the high constable, churchwardens, overseers, or inhabitants, to be allowed by such justices, and to direct such sum or sums to be raised in the manner in which it is at present raised, or if not, to direct such order or orders to the treasurer of the county, city, town, hundred, rape, wapentake, lathe, riding, division, or liberty, or where there shall be no treasurer of any such city, town, hundred, rape, wapentake, lathe, riding, division, or liberty, then to the treasurer of the county, who, on the receipt of such order or orders, is hereby authorized and required forthwith to pay such sum or sums of money as shall be therein respectively mentioned, to the party or parties to whom he shall be directed to pay the same, and such treasurer shall be allowed the same in passing his accounts; and the justices of the peace, at their then next general or quarter sessions of the peace to be holden for such county, or any adjournment thereof, shall order and direct such sum or sums of money as shall have been paid by such treasurer, under or by virtue of such order or orders, to be raised on the city, town, hundred, rape, wapentake, lathe, riding, division, or liberty, in which such damage or injury shall have been sustained, over, above, and in addition to the county rate to be paid by such city, town, hundred, rape, wapentake, lathe, riding, division, or liberty, in common with the rest of such county; or where any such city, town, cinque port, ancient town, corporate town, hundred, rape, wapentake, lathe, riding, division, or liberty, shall not be liable to contribute to the general rate for the county, then such sum or sums of money as shall have

Justices may order damages to be paid.

been paid by such treasurer, shall be raised by such ways and means and in the same manner as county rates are directed to be raised by stat. 12 *G.* 2. *c.* 29; and shall be forthwith repaid to such treasurer." 3 G.4. c.33.

§ 5. Enacts, "that it shall and may be lawful to and for any justice or justices of the peace in *England*, at any time or times to issue a summons under his or their hand and seal, or hands and seals, to any person or persons whomsoever, to attend as a witness or witnesses, and to give evidence, upon oath or affirmation, before such justices assembled at such special petty session, or any adjournment thereof, touching any matter of fact contained in any information or complaint then and there made, whether on the behalf of the party aggrieved, or such churchwardens or overseers, or inhabitants as aforesaid; and which summons such justice or justices as aforesaid are hereby required to grant, if thereunto required; and if such person or persons so summoned as aforesaid, upon being paid or tendered such sum for his, her, or their costs and charges, trouble and attendance, as the said justice or justices shall think reasonable, shall refuse or neglect to appear at the time and place to be for that purpose appointed, without such excuse for such his, her, or their refusal or neglect, as shall be approved by such justice or justices, or appearing shall refuse to be examined on oath or affirmation, or to give evidence before such justices, then and in every such case, every such person shall forfeit for every such offence any sum not exceeding 10*l.*, as in the discretion of such justices shall seem proper; which penalty shall be levied and recovered by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of any justice of the peace, acting in and for such city, town, cinque port, ancient town, corporate town, hundred, rape, wapentake, lathe, riding, division or liberty; which warrant such justice is hereby empowered and required to grant, at the request of the party or parties aggrieved, or such churchwardens or overseers or inhabitants as aforesaid; and the penalty or forfeiture, when recovered, after rendering the overplus (if any) upon demand, to the party or parties whose goods and chattels shall be so distrained and sold, the charges of such distress and sale being first deducted shall be paid to such churchwardens and overseers of the poor, or inhabitants, for the use and benefit of the poor of the parish, township, or place in which such damage or injury shall have been done; and in case sufficient distress shall not be found, or such penalty or forfeiture shall not be paid forthwith, it shall and may be lawful to and for such justice, and he is hereby authorised and required, by warrant under his hand and seal, to cause such offender or offenders to be committed to the common gaol or house of correction, there to remain without bail or mainprize for any time not exceeding three calendar months, unless such penalty and forfeiture and all reasonable charges shall be sooner fully paid and satisfied."

Magistrates may issue summons for witnesses.

Penalty on witnesses for not appearing, &c.

Application of the penalty.

§ 6. Enacts, "that in any action or actions hereafter to be brought in *England* against the inhabitants of any city, town, cinque port, ancient town, corporate town, hundred, rape, wapentake, lathe, riding, division, or liberty, under or by virtue of any or either of the before recited acts of parliament, it shall and may be lawful for the defendants in such action or actions, by and with the

Inhabitants may suffer judgment to go by default.

3 G.4. c.33.

consent and approbation of one or more of the justices of the peace acting in and for the parish, township, or place in which the damages shall be alleged by the plaintiffs in such actions to have been sustained, to suffer judgment to go by default, instead of appearing and defending the same, as directed by the said recited acts; but the plaintiffs in such actions shall nevertheless be required to produce the same proof before the sheriff or other officer taking the inquisition, in establishing his claim, as would be required if such actions had been defended; and that in taxing the costs, no more witnesses shall be allowed for than the sheriff or other officer shall certify to have been necessary to the support of the plaintiff's case; any thing herein or in the said recited acts contained to the contrary thereof notwithstanding."

Persons aggrieved may appeal to the quarter sessions.

§ 7. Enacts, "that if any person or persons in *England* shall think himself, herself, or themselves aggrieved by any thing done in pursuance of this act, such person or persons may appeal to the justices of the peace at their then next general quarter session of the peace to be holden for such county, or at any adjournment thereof, the person or persons appealing having first given at least ten days' notice in writing of such appeal, and of the nature and matter thereof, to the person or persons so appealed against, and within two days after such notice shall have been given having entered into a recognizance before some one justice for such city, town, hundred, rape, wapentake, lathe, riding, division, or liberty, with two sufficient sureties, conditioned to appear and try such appeal, and to abide the order of, and to pay such costs as shall be awarded by, the justices at such general quarter session, or any adjournment thereof; and the said justices at such quarter session, upon due proof of such notice in writing being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matter of such appeal in a summary way, and award such costs to the party so appealing or appealed against, as they the said justices shall think proper; and the determination of such quarter session shall be final, binding, and conclusive, to all intents and purposes."

Distress not unlawful for want of form.

§ 8. Enacts, "that where any distress shall be made for any sum or sums of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same, be deemed a trespasser or trespassers, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards done by the party or parties distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damages (if any) in an action upon the case; but no plaintiff or plaintiffs shall recover in any such action for such irregularity as aforesaid, if tender of sufficient amends hath been made for or on the behalf of the party distraining before such action brought."

Form of conviction.

§ 9. Enacts, "that all justices of the peace before whom any person shall be convicted of any offence against this act shall and may cause the conviction to be drawn up in the following form of words, or to the like effect:

City [*or*, County] of ———, to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the* ——— *year of the reign of his majesty* ———, A. B. *is convicted before me* C. D., *one of his majesty's justices of the peace for the said* [*county, city, town, cinque port, ancient town, corporate town, hundred, rape, wapentake, lathe, riding, division*, or *liberty*, as the case may be] *by virtue of an act made in the third year of the reign of his majesty king* George *the fourth, intituled* [here set forth the title of the act, and specify the offence, and the time and place when and where the same was committed, as the case may be]. *Given under my hand and seal, the day and year aforesaid.*" 3 G.4. c.33. *Ante*, p. 1077.

Provision for recovering damages sustained in *Scotland*.

§ 10. And whereas it is provided by the said recited act, passed in the first year of the reign of H. M. king *George* I., that all prosecutions for repairing the damages of any church or chapel, or any building for religious worship, or any dwelling house, barn, stable, or outhouse, which shall be demolished or pulled down, in whole or in part, within *Scotland*, by any persons unlawfully, riotously, or tumultuously assembled, should and might be by summary action at the instance of the party aggrieved, his or her heirs or executors, against the county, city, or burgh respectively; and it is expedient that the said provisions should be altered and amended, and farther provisions made for the relief of persons injured or damnified by any unlawful, riotous, or tumultuous assembly in *Scotland*; it is enacted, that in every case where any damage or injury shall be done to any church, chapel, or building for religious worship, or to any house, shop, or other building whatsoever, or any fixtures attached thereto, or any furniture, goods, or commodities therein, by the act or acts of any unlawful, riotous, or tumultuous assembly of persons, or by the act or acts of any person or persons engaged in or making part of such unlawful, riotous, or tumultuous assembly, the party injured or damnified thereby shall be entitled to recover full compensation for the loss or injury, by summary action against the town clerk of the city or burgh within which the loss or injury shall have been sustained, or the clerk of supply of the county or stewarty wherein the loss or injury shall have been sustained, if the same shall not have been within any city or burgh; which action shall and may be brought before the justices of the peace acting in execution of stat. 39 & 40 *G.* 3. *c.* 46., intituled *An act for the more easy and expeditious recovery of small debts, and determining small causes in that part of* Great Britain *called* Scotland, subject to all the provisions of the said act, where the sum claimed shall not exceed 5*l.*, and shall and may be brought before the judge ordinary where the amount claimed shall exceed that sum. (39 & 40 G.3. c.46.)

Proceeding after decree, and mode of assessment.

§ 11. Enacts, " that it shall and may be lawful for the pursuer of any such action in *Scotland*, so soon as he or she shall have obtained a final decree therein, to lodge an extract thereof with the clerk of supply of the county or stewartry, or with the town clerk of the city or burgh, as the case may be; and the said clerk of supply, or town clerk, shall intimate the same forthwith to the convener of the commissioners of supply, or acting chief magistrate respectively, and the said convener or acting chief magis-

3 G.4. c.33. trate is hereby authorised and required to summon a meeting of the commissioners of supply of the county or stewartry, or of the magistrates of the city or burgh, as the case may be, to be holden within six calendar months after receiving intimation as aforesaid, who are hereby authorised and required so to meet, and to make an assessment for the payment of every sum so decreed for, in manner following; that is to say, by the commissioners of supply so assembled, upon the land, according to the valued rent thereof, and upon the houses situated therein, not being within any city or burgh, according to the actual or real rent of such houses, to be paid by the occupiers of such land and houses respectively, so that for every shilling levied in respect of such valued rent, there shall be levied one penny for and in respect of such actual rent of such houses; and in any city or burgh wherein any such assessment shall be required, the same shall be made by the magistrates so assembled upon the actual or real rent of houses within the same, to be paid by the occupier thereof, according to a percentage to such amount as shall be necessary to pay every such sum so decreed for."

Expence and mode of collection.

§ 12. Enacts, "that it shall and may be lawful for such magistrates and such commissioners of supply as aforesaid respectively, to add to the amount of every such assessment such sum of poundage as shall be usually paid at the time to the collector of the cess in such county or stewartry, or in such city or burgh, for and in respect of their respective collections; and every assessment so made shall be forthwith collected therefrom, and by means thereof every such claim of damage or injury, according to the amount thereof decerned for as aforesaid, shall be paid by the collector, as soon as conveniently may be, to the person or persons entitled thereto; and if any such assessment shall not be paid by any person liable therein within six days after the same shall have been demanded by such collector, the same shall and may be recovered by a poinding and sale of the goods and effects of the defaulter, upon the warrant of any two justices of the peace of the county or stewartry, or any two of the magistrates of the city or burgh wherein the same may be, upon the oath of the collector, who is hereby authorised, upon such warrant, to cause so much of the goods and effects as may be necessary to be apprized and sold within 10 days after the date of every such warrant; and after paying the amount of such assessment, with the expences attending such poinding and sale, such collector shall account for the overplus, if any be, to the owner or owners of such goods or effects."

Provision in case of omission or neglect.

§ 13. Enacts, "that in case any clerk of supply, town clerk, convener, chief magistrate, commissioners of supply, or magistrates, or any collector, shall omit or neglect to do what is herein required of such persons respectively, it shall and may be lawful for any party aggrieved to apply by summary complaint to the court of session, which court is hereby directed, in such case, to do therein as to such court shall seem just."

Persons who may recover in the case of a church.

§ 14. Enacts, "that in the case of any such damage or injury done to any church, chapel, or building for religious worship, in *Scotland*, every such compensation shall and may be recovered in the name of the clergyman, or minister officiating therein."

§ 15. Enacts, "that every action for any claim of damage under this act in *Scotland*, shall be commenced within one calendar month after the damage shall have been done or injury suffered, otherwise the person claiming such damage shall not be entitled to relief under this act." **Time within which action shall be commenced.**

§ 16. Enacts, that nothing in this act contained shall extend to that part of the U. K. called *Ireland*. **Act not to extend to Ireland.**

Schedules referred to by Stat. 3 *G.* 4. *c.* 33.

(A.) Form of Notice to the High Constable, Mayor, or other Chief Magistrate, or Principal Inhabitant, Churchwardens, Overseers, or substantial Householders, for summoning a Petty Sessions of Magistrates.

To the high constable, &c. [*as the case may be.*]

City [*or*, County] of ——— to wit. } *I DO hereby give you notice to summon a special session, or petty session of the magistrates residing in or acting for* [here specify the city, hundred, or place, as the case may be], *on or before* [here specify the time, the same to be within 30 days after the receipt of the notice], *for the purpose of hearing and determining the complaint which shall then and there be brought before them, for or on account of the damages sustained by me through or by means of* [here state the means], *on the* ——— *day of* ——— *last. Given under my hand this* ——— *day of* ——— *in the year* ———.

(*Signed*) A. B.

(B.) Form of Notice to be placed on the Church or Chapel Door, or other conspicuous Part of the Parish, Township, or Place [*as the case may be*].

City [*or*, County] of ——— to wit. } *I DO hereby give notice, that application will be made by me to the magistrates for the* ——— *at a special or petty session to be holden for the purpose of hearing and determining the amount of the damages or injury sustained by me by or through the means* [state the means], *on the* ——— *day of* ———, *in the parish, township, or place* [as the case may be]. *Given under my hand, this* ——— *day of* ———.

(*Signed*) A. B.

Form of an Assessment to reimburse a High Constable the Expences necessarily incurred in defending an Action against the Hundred.

[See stat. 8 G. 2. c. 16. *ante*, p. 1072.]

County of ———, Hundred of ———. } To the high constables of the hundred of ———, in the said county.

WHEREAS information and complaint upon oath have been made before us, J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, acting for the said hundred of* ———, *by* I. W. *high constable of the said hundred, that* ——— *separate actions having been brought in his majesty's court of King's Bench against the inhabitants of the said hundred, by* [here insert the names of the several plaintiffs], *for damages pretended by the said several persons to have been sustained by them respectively by and from fire in the parish of* ———, *in the said county and hundred, in the month of* ——— *in the year of our Lord one thousand eight hundred and* ———, *when and where several buildings, the property of the said plaintiffs respectively were consumed, and which premises the said plaintiffs attempted to shew were wilfully and maliciously set on fire by some person or persons unknown; and whereas it was resolved by the inhabitants of the several parishes in the said hundred in their respective vestries called for that purpose, that the said actions should be defended and resisted by the said* I. W. *being the high constable of the said hundred at the period of such actions being so brought as aforesaid, and that the inhabitants of the said parishes would respectively pay the expenses of such defence in the proportion in which each parish stands assessed to the county rate of the said county of* ———; *and whereas the said* I. W. *has effectually and successfully resisted the said several actions, and obtained against the said respective plaintiffs taxed costs to the amount of* ———, *but that there still remains certain incidental expenses and charges, to which the said* I. W. *has been put, in defending the inhabitants of the said hundred, to the amount of* ———.

We, therefore, in pursuance of the statute in that case made and provided, do hereby direct the sum so due as aforesaid to be paid by the several parishes in the said hundred respectively as hereunder written, and do require the churchwardens and overseers of the poor of the several parishes so assessed to pay the said sum to you, the high constable first beforenamed, in the proportion and in the sums against the name of each parish respectively, set at the foot hereof, and that you pay the said sum of ———, *so collected by you, unto the said* I. W. *And further, that you make return hereof unto us. Given under our hands and seals at* ———, *in the said county and hundred, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P.
K. P.

ASSESSMENT.

	£.	s.	d.
The parish of *A*. - - -	1	10	0
The parish of *B*. - - -	2	0	0
&c. &c. &c.			

Made and allowed by us this ——— day of ———.

J. P.
K. P.

[And see the statutes of Hue and Cry, *ante*, that title.]

Hunting. See Game, ante.

Husband. See Wife, Vol. V.

END OF THE SECOND VOLUME.

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ADDENDA.

Excise and Customs.

§ I. (*o*) p. 44, and § II. (*f*) p. 66.

By stat. 28 *G.* 3. *c.* 37. § 24., in case any information or suit shall be commenced and brought to trial, on account of the seizure of any goods, wares, or merchandize seized as forfeited by virtue of this or any other act or acts of parliament now in force or hereafter to be made, relating to the said revenues, viz. (of customs and excise) or either of them, or of any ship, vessel, or boat, or of any horse, cattle, or carriage used or employed in removing or carrying the same, wherein a verdict shall be found for the claimer thereof, and it shall appear to the judge or court before whom the same shall be tried or heard, that there was a probable cause for making such seizure; and in such case the claimant shall not be entitled to any costs of suit whatsoever, nor shall the person or persons who made such seizure be liable to any action, indictment or other suit or prosecution, on account of such seizure, and in case any action, indictment or prosecution shall be commenced and brought to trial against any persons or persons whatsoever, on account of the seizing any such goods, wares, or merchandize, or of any such ship, vessel, boat, horse, cattle, or carriage, used or employed in removing or carrying the same (whether any information shall be brought to trial to condemn the same or not), and a verdict shall be given against the defendants or defendant, if the court or judge before whom such action, indictment or prosecution shall be tried, shall certify that there was a probable cause for such seizure, then the plaintiff, besides the thing so seized or the value thereof, shall not be entitled to above two-pence damages, nor to any costs of suit; nor shall the defendants in such prosecution be imprisoned or be fined above one shilling.

28 G. 3. c. 37. Probable cause for seizure.

Damages. Costs.

Punishment of defendant.

[*Vide ante*, § 1. p. 44.]

Laugher v. *Brefitt and another*, *E.* 1822. 5 *B.* & *A.* 762. Trespass against the defendants who were custom house officers, for breaking and entering plaintiff's warehouse and seizing and taking a quantity of verdigris belonging to the plaintiff on pretence of its being French verdigris that had not paid duty. Plea, not guilty. It was admitted by the defendants on the trial that the verdigris in question was of English manufacture, and therefore not liable to any duty. It appeared, however, that it was a very

In trespass against custom-house officers for taking plaintiff's goods which had been returned in a deteriorated state before action brought.

Laugher *v.* Brefitt.

a verdict was found for Plaintiff for the difference in price between the value of the goods at the time of seizure and the time when they were returned. The Judge certified that there was probable cause for seizure: Held that plaintiff was not precluded by 28 G. 3. c. 37. § 24. from taking out execution for the damages found by the Jury.

close imitation of French verdigris: and this resemblance was continued in the paper and string with which it was packed. The defendants kept the verdigris six weeks in their custody, and delivered it to the plaintiff before the action was brought, but in a damaged state, and it was sold by plaintiff before the trial. Verdict for plaintiff for 73*l.* 15*s.* 8*d.*; and *Abbott* C. J. certified, under stat. 28 *G.* 3. *c.* 37. § 24. *ante*, p. 1089. that there was probable cause for the seizure. The plaintiff having entered up his judgment for the damages obtained at the trial, the Solicitor General obtained a rule for setting aside that judgment and entering up judgment for plaintiff for 2*d.* damages only. On showing cause, *Baldwin* v. *Tankard*, 1 *H. Bla.* 88. was cited, in which it was decided, that a judge's certificate under this statute that there was probable cause for seizure, did not deprive a plaintiff of his damages for injuries accompanying the seizure.—*Abbott* C. J. I am of opinion that the plaintiff is entitled to have judgment and execution for the damages found by the jury. The seizure in this case turned out in the result to be unlawful. Now if the act of parliament had never passed, the plaintiff would have been entitled to recover damages for the injury he had sustained by the seizure and detention of his goods; and the value of them at the time they were seized, together with any loss he might have sustained by the seizure and detention, would be the measure of his damages. If, therefore, in the course of the cause, the goods had been returned, the plaintiff would still have been entitled to proceed for further damages. The act of parliament in this case deprives the plaintiff of his right to recover damages in respect of the seizure and detention of the goods, but expressly reserves to him the right of recovering the thing seized, or the value thereof. I am of opinion that *the value thereof* means the value at the time of seizure, and not the value at the time when the goods are returned; and there being nothing to show that the plaintiff accepted the verdigris itself in full satisfaction, I think he is entitled to have the difference between the value of the verdigris at the time of seizure and the time when it was returned to him; and that being so, this rule must be discharged with costs. *R. D.*

[*Vide ante*, § 1. (*u*) p. 52.]

56. G. c. 104.

No forfeited goods shall be sold at a less price than equal to the duties, &c.

By stat. 56 *G.* 3. c. 104. § 17. It is enacted, that no goods, wares, or merchandize whatsoever condemned as forfeited under any law or laws of customs or excise, in any part of the U. K. of *G. B.* or *Ireland*, shall be sold at a less price than shall be equal to the amount of the duties of customs and excise respectively payable upon such goods, wares, or merchandize respectively, when imported or taken out of home consumption; and that all condemned goods, wares, or merchandize, for which on public sale a price shall not be offered equal, at the least, to the price aforesaid, and all condemned goods, wares, and merchandize, the importation whereof is or shall be wholly prohibited, shall be forthwith destroyed or sold for exportation, or applied and disposed of to such public use as shall be ordered by the lords commissioners of H. M.'s treasury for the time being, or any three of them.

[*Vide ante*, § 1. (z) p. 54.]

Equalizing the Weights and Measures by which Customs and Excise Duties are charged in U. K.

[5 *G.* 4. *c.* 55. *c.* 74.]

5 G. 4. c. 55. Tables of weights and measures shall be constructed under the directions of the treasury, by which the duties, &c. of customs and excise shall be uniformly collected throughout the U. K.

Stat. 5 *G.* 4. *c.* 55. § 9. Reciting that it is expedient that the measures and weights by which the rates, and duties, and drawbacks of customs and excise are charged, and paid, and allowed in *Ireland*, should be the same as the measures and weights by which the rates, duties, and drawbacks on the like articles are charged, and paid, and allowed in *G. B.*, enacts, that so soon as conveniently may be after the passing of this act (9 *June*, 1824.) there shall be prepared accurate tables of the measures and weights, specifying the contents thereof respectively, by and according to which all duties and drawbacks of customs and excise, throughout the U. K. of *G. B.* and *Ireland*, shall be charged, and paid, and allowed; and such tables shall be prepared under the direction of the lord high treasurer of the U. K. of *G. B.* and *Ireland*, or the commissioners of H. M.'s treasury for the time being, in order that the several rates, and duties, and drawbacks, and allowances of customs and excise throughout the U. K. may be uniformly made payable according to the respective contents and quantities of such measures and weights, and by and according to the same measures and weights throughout the U. K., and that such tables shall be published in the *London* and *Dublin* gazettes; and that from and after such time as shall be appointed by the lord high treasurer, or commissioners of H. M.'s treasury, or any three of them, and as shall be specified in the advertisement of such tables in the *London* and *Dublin* gazettes, all rates and duties, and all drawbacks and allowances on goods, wares, and merchandize, whether of the growth, produce, or manufacture of any part of the U. K., or of the growth, produce, or manufacture of foreign parts, which shall be collected or allowed by any of the officers of H. M.'s customs or excise throughout the U. K., shall be charged and calculated, and raised, paid, levied, collected, taken, received, recovered, allowed, and accounted for, according to the measures and weights specified and set forth in such tables to be prepared and published as aforesaid, and according to the contents of such measures and weights respectively; any law, usage, or custom to the contrary thereof in any wise notwithstanding.

5 G. 4. c. 74.

And now by stat. 5 *G.* 4. *c.* 74. (the *weights and measures uniformity act*,) reciting, (§ 20.) that "the weights and measures by which the rates and duties of the customs and excise, and other H. M.'s revenue, have been heretofore collected, are different from the weights and measures of the same denominations directed by this act to be universally used; and whereas the alteration of such weights and measures may, without due care had therein, greatly affect H. M.'s revenue, and tend to the diminishing of the same;" it is enacted, "that so soon as conveniently may be after the passing of this act, (17 *June*, 1824) accurate tables shall be prepared and published, under the direction of the commissioners of the treasury for the time being, in order that the several rates and duties of customs and excise, and other H. M.'s revenue, may be adjusted and made payable according to the respective quantities of the

5 G. 4. c. 74. legal standards directed by this act to be universally used; and that from and after *May* 1. 1825, and the publication of such tables, the several rates and duties thereafter to be collected by any of the officers of H. M.'s customs or excise, or other H. M.'s revenue, shall be collected and taken according to the calculations in the tables to be prepared as aforesaid."

[*Vide ante*, § II. (*a*) p. 56. end of line 2.]

5 G. 4. c. 75. Parish of *St. Pancras* to be under the inspection of head office of excise.

By stat. 5 *G.* 4. *c.* 75. § 3. reciting stat. 12 *C.* 2. *c.* 24. § 48. and that since the passing of the said act the parish of *St. Pancras* in the county of *Middlesex* is greatly increased in buildings and inhabitants, and is contiguous to the parishes within the said bills of mortality; enacts, that the said parish of *St. Pancras* shall, from and after 5 *July*, 1824, be under the immediate care, inspection, and management of the said head office of excise, any law or usage to the contrary notwithstanding.

[*See ante*, p. 202.]

But now see stat. 5 *G.* 4. *c.* 74. § 20. and 5 *G.* 4. *c.* 55. § 9. p. 1091. and Vol. V. *tit.* Weights, &c.

[*P.* 240. *end of* § IV. (12) Paper.]

5 G. 4. c. 55. Duties, &c. on paper of Irish manufacture.

By stat. 5 *G.* 4. *c.* 55. § 1—8. the duties and drawbacks on parchment, paper and paper hangings manufactured in Ireland are assimilated to those payable on the like articles in *G. B.*: with certain allowances for paper used in printing bibles, &c. by King's Printer and *Trinity* College, *Dublin*.

Forgery.

[*Vide ante*, p. 501.]

R. v. *Fauntleroy*, *M.* 5 *G.* 4. *Bingh. Rep.* 413. A power of attorney for the transfer of government stock is a *deed* within the meaning of stat. 2 *G.* 2. *c.* 25. and a conviction under that statute for the forging of such a power was holden sufficient.

Gaols and Houses of Correction.

[*Vide ante*, 680. 31 *G.* 3. *c.* 46. in margin.]

Add after the word "*transportation*" in line 5—But this excepted provision of stat. 31 *G.* 3. *c.* 46. (viz. § 7.) is since repealed by stat. 5 *G.* 4. *c.* 84. § 29. See Vol. V. tit. Transportation

Hackney Coaches.

[*Vide ante*, p. 766.]

CLOUD v. *Turfery and Abbott*, *C. P.* 2 *Bing.* 318. *M.* 1824. Trespass to recover damages for the seizure and detention of a coach and two horses. Plea, general issue. At the trial before *Dallas* C. J. at *Westminster* sittings after *Mich. Term* 1820, the jury found a verdict for the plaintiff, damages 12*l.*, subject to the opinion of the court upon the following case:—The plaintiff was the owner of a stage-coach duly licensed by the commissioners of stamps to carry passengers between *London* and *Hammersmith*: and the defendant *Turfery* was a messenger to the commissioners for licensing and regulating hackney coaches. On the 21st of *April* 1820, the driver of the plaintiff's coach took up in *St. Paul's* church-yard, from which place the coach sets out in *London* to proceed towards *Hammersmith*, one *Lindsay*, who resided in *Queen-street*, *May-fair*, and who had previously, at the coach-office of the plaintiff, booked his place and paid his fare for the whole distance to *Kensington*. When the coach arrived at *Hyde Park corner*, *Lindsay* desired to be set down, and was set down accordingly. He had not previously made known to the driver of the coach his intention of proceeding no further than *Hyde Park corner* on that day; but he had on former days been set down in like manner, always booking a place and paying the full fare to *Kensington*. On the following day the driver in like manner conveyed the same person under precisely the same circumstances. The plaintiff's coachman who so drove *Lindsay*, had been previously warned by the commissioners for regulating hackney coaches, that he was acting illegally in conveying *Lindsay* as well as others from place to place within the paved streets. On the 17th of *June* 1820, the defendant *Turfery*, under and by virtue of two warrants of distress respectively under the hands and seals of the commissioners for licensing and regulating hackney coaches, and bearing date respectively the 16th of *June* 1820, seized and levied as distress for certain penalties under two convictions, a coach and two horses belonging to the plaintiff, and drove them to and left them at the stable-yard of the defendant *Abbott*, in *Drury Lane*; where they were detained by *Abbott* until the plaintiff, to repossess himself thereof, was obliged to pay to the defendants the amount of the two penalties claimed, *viz.* 10*l.*, together with 1*l.* 2*s.* as costs of the said warrants of distress. The defendants, under the general issue, gave in evidence two convictions precisely similar to each other, except that in the first the offence was laid on the 21st of *April* 1820, and in the second it was laid on the 22d of *April* 1820. The following is a copy of the first of the convictions:—"Be it remembered, that on the 12th day of *May* in the first year of the reign of our sovereign lord *George* the fourth, by the grace, &c., in *Essex-street*, in the parish of *St. Clements Danes*, in the county of *Middlesex*, *Sarah Ann Quaife*, of *Essex-street* aforesaid, cometh

Stat. 9 Ann. c. 23. § 4. inflicts a penalty on any person who shall drive or let to hire any hackney coach or coach horses in the cities of London or Westminster without a licence from the commissioners of hackney coaches.

Stat. 1 G. 1. c. 57. § 1. inflicts a penalty on any person who shall drive for hire in the same cities with any coach whatsoever, hearse or coach horses, except such person be licensed by the commissioners of hackney coaches:

Held, that a conviction was insufficient which charged the party with driving and letting to hire in the said cities a certain coach and two coach horses, and also with driving to hire a certain coach and two coach horses, and conveying a person in the said coach for hire. Form of conviction.

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in her proper person before us, the major part of the commissioners nominated and appointed by his majesty's commissioners under the great seal of *Great Britain* for the licensing and regulating hackney coaches and chairs: and now here giveth us the said commissioners to understand, that one *George Cloud* of *Hammersmith*, in the county of *Middlesex*, coach-master, heretofore, to wit, on the 21st day of *April*, in the year of our Lord, 1820, and in the first year of the reign of his said majesty, the said *George Cloud*, not then and there being licensed by the commissioners aforesaid or the major part of them so to do, did *drive and let to hire* a certain *coach* and divers, to wit, two *coach horses*, from *St. Paul*'s church-yard, in the parish of *St. Faith*, in the city of *London*, to *Piccadilly* in the parish of *St. George, Hanover Square*, in the liberty of the city of *Westminster*, in the county of *Middlesex:* the first mentioned place, to wit, *St. Paul*'s church-yard in the parish of *St. Faith*, then and there being within the bills of mortality, and within and upon the paved streets of *London*, and the said next mentioned place, to wit, *Piccadilly*, in the parish of *St. George, Hanover Square*, in the liberty of the city of *Westminster*, then and there being within the bills of mortality, and within and upon the paved streets of *Westminster*, contrary to the form of the statutes in such case made and provided: whereupon the said *George Cloud* being duly summoned to appear before us the said commissioners, in *Essex-street*, in the county of *Middlesex* aforesaid, to make his defence against the said charge contained in the said information, appeared before us by one *Richard Cloud*, his agent in that behalf, on the day and year first above mentioned, and having heard the same, the said *Richard Cloud*, as such agent as aforesaid, is asked by us the said commissioners, if he can say any thing for or on behalf of the said *George Cloud*, why the said *George Cloud* should not be convicted of the premises above charged upon him in form aforesaid; who pleadeth and saith, that the said *George Cloud* is not guilty of the premises, and ought not to be convicted thereof, but doth not shew to us why the said *George Cloud* should not be convicted of the offence in the said information above contained against him: and further, at the same time and place, (that is to say,) at *Essex-street* aforesaid, one credible witness, to wit, *John Gibbs*, of the parish of *Lambeth*, in the county of *Surrey*, yeoman, came before us, and in the presence of the said *Richard Cloud*, who appeared as aforesaid on behalf of the said *George Cloud*, the said *John Gibbs* upon his oath, on the holy Gospel of *God* to him, then and there by us administered, (we being duly authorised and empowered to administer the said oath,) deposeth and saith, that a driver of the said coach, in the employ of the said *George Cloud*, on the said 21st day of *April* in the year aforesaid, did *drive to hire* a certain *coach* and two *coach horses* from *St. Paul*'s church-yard, in the parish of *St. Faith* aforesaid, in the city of *London* aforesaid, to *Piccadilly* in the parish of *St. George, Hanover Square*, within the liberty of the city of *Westminster* aforesaid, in the county aforesaid, the same places then and there respectively as aforesaid being within or on the paved streets of *London* and *Westminster* as aforesaid; and that the said *John Gibbs* then and there saw the driver of the said coach of the said *George Cloud* take up in the said coach, which he was then and there driving, at *St. Paul*'s

church-yard aforesaid, in the parish of *St. Faith* aforesaid, in the city of *London* aforesaid, a certain person whose name is as yet unknown; and that the said driver of the said coach of the said *George Cloud*, then and there carried and conveyed the said person in the said coach for hire from *St. Paul's* church-yard aforesaid, in the parish of *St. Faith* aforesaid, in the city of *London* aforesaid, to *Piccadilly* aforesaid, in the parish of *St. George, Hanover Square*, in the liberty of the city of *Westminster* aforesaid, in the said county, and upon hearing and duly examining the whole matters aforesaid, it manifestly appeareth to us, that the said *George Cloud* is not licensed by us, and that he is guilty of the premises above charged upon him in and by the information aforesaid; therefore the said *George Cloud*, on the said 12th day of *May* in the first year aforesaid, before us the commissioners aforesaid, by the testimony of the said *John Gibbs*, a credible witness as aforesaid, according to the form of the statutes in such case made and provided, is convicted of the offence aforesaid, and hath forfeited the sum of *5l.* of lawful money of *Great Britain*, to be distributed as the law directs. In witness whereof, we the said commissioners to this present record of conviction, have set our hands and seals at *Essex-street* aforesaid, in the county aforesaid, the said 12th day of *May*, in the said first year of the reign of our said lord the king that now is."—The question for the opinion of the court was, "Whether the plaintiff was entitled to recover: if the court should be of that opinion the verdict was to stand; but if the court should be of the contrary opinion, a nonsuit was to be entered."—Counsel for plaintiff were stopped by the court. Argument for the defendants. The plaintiff has clearly been guilty of an offence under stat. 9 *Ann. c.*23. § 4., and 1 *G.* 1. *c.*57. § 1. By the first of those statutes a monopoly was given to the licensed owners of hackney coaches within the cities of *London* and *Westminster*, upon the considerations of a certain rent, certain regulated fares, and various rules, bye-laws, and penalties to which they were subjected; it would therefore be a great injustice if they were exposed to the competition of other coaches. [*Gaselee* J. Before you are let in to argue the merits, you must support the conviction. The thing prohibited by 9 *Ann.* is the driving or letting to hire any hackney coach without being duly licensed; but the conviction no where states that the plaintiff drove or let to hire a hackney coach.] Within the spirit of that act, and for the necessary protection of hackney coach owners, any coach must be deemed a hackney coach in which the driver conveys persons from street to street for hire, and this the driver appears to have done in the plaintiff's coach; besides, he is alleged to have let to hire two coach-horses, which the act also prohibits: but by 1 G. 1. he is liable to a penalty if he drives for hire with any coach whatever, unless previously licensed by the hackney coach commissioners. [*Burrough* J. The information alleges, that the driver of the Plaintiff did drive *to* hire a certain coach, and conveyed a person in the coach for hire, instead of alleging, according to the words of the act, that he drove *for* hire *with* a coach.] It is clear, from the whole case, that the plaintiff knew he was infringing the rights of the hackney coachmen, and in an action like the present the court will decide on the merits of the case, and not on the technical language of the conviction. Stat. 55 *G.* 3. *c.*185. § 11, 12.

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Cloud v. Turbury and Abbott. only allows the drivers of stages to take up passengers in the streets for the places of their ultimate destination.—*Per Best* C. J. If the conviction is not strictly regular, and our judgment is to go against the plaintiff, a man may be punished who is in law unconvicted of any offence. He may have done that which has rendered him liable to a conviction; but unless that conviction is legally and regularly obtained, execution must not ensue. Now the conviction to be good, must pursue not only the words but the spirit of the act of parliament. This has not been done in the present instance, either with reference to the statute of *Ann.* or that of *G.* 1. The fact is, as it has been stated, that licensed hackney coachmen were allowed to claim a monopoly in respect of certain rents which they paid to government for the same; and the statute of *Ann.* was passed to prevent others who were not thus licensed from interfering with their business. Clearly, however, the statute was not intended to apply to stage coaches, which in driving along might take up and put down their passengers in the streets. According to the words of the act, the party, to make himself liable, must profess to act as a hackney coachman, which in this case he did not profess, but on the contrary is stated to have made a contract perfectly legal, and which he was bound, if called on, to make. Under this contract he was conveying a passenger to *Kensington*, but on the road that passenger wished to alight; and I know of no law which gives the coachman the power of forcing him to go on. With respect to the statute of *G.* 1., there is a fatal variance between the words of the act and the information, in which it is no where stated that the plaintiff drove *for* hire. I am therefore of opinion that the conviction cannot be supported on either of these statutes, and that stat. 55 *G.* 3. has no reference to the matter at all. The conviction is consequently bad, and the plaintiff is entitled to recover.

Judgment for the plaintiff.

END OF THE SECOND VOLUME.

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